

# FEDERAL REGISTER

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## TITLE 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

#### PART 5—REGULATIONS, INVESTIGATION, AND ENFORCEMENT

#### PART 8—PROMOTION, DEMOTION, REASSIGNMENT, AND TRANSFER

#### PERSONS DISQUALIFIED FOR APPOINTMENT; GENERAL REQUIREMENTS FOR PROMOTION, DEMOTION, REASSIGNMENT, AND TRANSFER OF EMPLOYEES WHO HAVE COMPETITIVE STATUS

1. Effective upon publication in the FEDERAL REGISTER, § 5.101 is added to Part 5 as set out below.

#### REGULATION UNDER CIVIL SERVICE RULE V

§ 5.101 *Persons disqualified for appointment.* (a) Persons disqualified for any of the reasons stated under Civil Service Rule II, § 2.104 (a) (1) through (8) of this chapter, may, in the discretion of the Commission, be denied examination, or be denied any of the types of appointment listed in Civil Service Rule II, § 2.112 (a) (1) through (6), namely, original probational, reappointment, reinstatement, temporary appointment, interagency transfer, and conversion from excepted, war service indefinite or temporary indefinite appointment to competitive appointment, for a period of not more than three years from the date of the determination of such disqualification.

2. Subparagraph (2) of § 8.101 (a) is amended to conform to the Classification Act of 1949. As amended, § 8.101 (a) reads as follows:

§ 8.101 *General requirements for promotion, demotion, reassignment, and transfer of employees who have competitive status.* (a) An employee having a competitive status may be promoted, demoted, reassigned, or transferred subject to the following requirements:

(1) The qualifications standards of the Commission for promotion or reassignment to the position must be met.

(2) An employee serving in a position in Grade GS-7 or a comparable or higher salary level, who has served continuously

in the field or nonapportioned service of an agency for at least the three years immediately preceding, may be transferred, promoted, demoted, or reassigned to an apportioned position not lower than Grade GS-7 in the same agency without regard to the apportionment. In all other transfers, promotions, demotions, or reassignments the employee must be eligible under the apportionment quota restrictions of § 2.110 of this chapter unless he is a veteran or has previously served in the apportioned service. However, the Commission may, upon request of the agency, waive the apportionment when the transfer, promotion, demotion, or reassignment is in the interest of good administration.

(3) He must complete the probationary period in the new position if he is promoted, demoted, reassigned, or transferred before completion of probation.

(4) In all interagency transfers under this part, the employee must meet the citizenship requirements set forth in § 2.103 (a) of this chapter.

(5) In all proposed interagency transfers to positions designated by the head of the agency as "sensitive," preappointment loyalty checks must be completed under the requirements of the Federal Employees Loyalty Program.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 9830, Feb. 24, 1947, 12 F. R. 1259; 3 CFR, 1947 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] HARRY B. MITCHELL,  
Chairman.

[F. R. Doc. 50-3347; Filed, Apr. 20, 1950; 8:49 a. m.]

## TITLE 16—COMMERCIAL PRACTICES

### Chapter I—Federal Trade Commission

[Docket 5576]

#### PART 3—DIGEST OF CEASE AND DESIST ORDERS

J. RICHARD PHILLIPS, JR., & SONS, INC., ET AL.

Subpart—Discriminating in price under sec. 2, Clayton Act, as amended:

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# FEDERAL REGISTER

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§ 3.820 *Direct buyers.* I. In connection with the sale of food products or other merchandise in commerce, and on the part of respondent sellers, and their officers, agents, etc., paying or granting, directly or indirectly, to Taylor & Sledd, Inc., or any other buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale made to any such buyer for its own account; and, II, in connection with the purchase of food

products or other merchandise in commerce, and on the part of the aforesaid respondent buyer, his officers, etc., receiving or accepting from any seller, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase made for such respondent's own account; prohibited.

(Sec. 2, 38 Stat. 730, as amended; 15 U. S. C. 13) [Cease and desist order, J. Richard Phillips, Jr., & Sons, Inc., et al., Docket 5576, February 8, 1950]

*In the Matter of J. Richard Phillips, Jr. & Sons, Inc., a Corporation; H. P. Cannon & Son, Inc., a Corporation; Charles T. Wrightson & Son, Inc., a Corporation; the Torsch Canning Company, a Corporation; Walter M. Cameron, Sr., and Walter M. Cameron, Jr., Partners. Trading as Cameron Brothers Canning Company; Charles B. Osborn and S. Mitchell Osborn, Partners Trading as C. B. Osborn Sons; and Taylor & Sledd, Inc., a Corporation*

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers of the respondents, in which answers said respondents admit, with certain qualifications, all of the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearing as to said facts; and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13):

*It is ordered,* That the corporate respondents, J. Richard Phillips, Jr. & Sons, Inc., H. P. Cannon & Son, Inc., Charles T. Wrightson & Son, Inc., and The Torsch Canning Company, and their officers, and Walter M. Cameron, Sr., and Walter M. Cameron, Jr., individually and as partners trading as Cameron Brothers Canning Company, and Charles B. Osborn and S. Mitchell Osborn, individually and as partners trading as C. B. Osborn Sons, and said respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to Taylor & Sledd, Inc., or to any other buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale made to any such buyer for its own account.

*It is further ordered,* That the respondent, Taylor & Sledd, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in com-



merce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase made for such respondent's own account.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: February 8, 1950.

By the Commission,

[SEAL] D. C. DANIEL,  
Secretary.

[F. R. Doc. 50-3337; Filed, Apr. 20, 1950;  
8:45 a. m.]

## TITLE 19—CUSTOMS DUTIES

### Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 52454]

#### PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

##### CANCELLATION OF BONDS

Section 10.39, Customs Regulations of 1943 (19 CFR 10.39), as amended, is further amended as follows:

Paragraph (e) is amended by inserting immediately after "If" at the beginning of the first sentence "there has been default with respect to all the articles covered by the bond and"; by substituting "article" for "articles in respect of which there was a default" in subparagraph (1); by substituting "article" for "merchandise in respect of which there was a default" in subparagraphs (2) and (3); by deleting subparagraph (4), and by redesignating subparagraph (5) as subparagraph (4).

Paragraph (f) is amended by inserting "or (f)" after "paragraph (e)" wherever the latter appears therein and is redesignated as paragraph (g).

A new paragraph (f) is inserted to read as follows:

(f) If there has been compliance with the terms of the bond with respect to part of but not all the articles covered thereby and a written application for relief is filed, and if that part of the liability for liquidated damages which represents one and one-quarter times the duty on the articles in respect of which there has been a default does not exceed \$1,000, or \$2,000 in the case of articles entered under section 308 (5), the collector may cancel the total liability for payment of liquidated damages in any amount upon the payment of an amount equal to one and one-quarter times the duty on the articles in respect of which the default occurred, provided the collector is satisfied that the importation was properly entered under paragraph 1607 or section 308 and that there was no intent to defraud the revenue or delay the payment of duty.

(Sec. 624, 46 Stat. 759, as amended; 19 U. S. C. 1624. Interprets or applies secs. 308, 623, 46 Stat. 690, as amended, 759, as amended, par. 1607, sec. 201, 46 Stat. 673; 19 U. S. C. 1308, 1623, 1201, par. 1607)

[SEAL] FRANK DOW,  
Commissioner of Customs.

Approved: April 14, 1950.

JOHN S. GRAHAM,  
Acting Secretary of the Treasury.

[F. R. Doc. 50-3350; Filed, Apr. 20, 1950;  
8:55 a. m.]

## TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

### Chapter I—Veterans' Administration

#### PART 14—LEGAL SERVICES, SOLICITOR'S OFFICE

##### SUBPART C—GUARDIANSHIP SERVICES

#### DETERMINATION OF NEED FOR INSTITUTIONAL AWARD AND NOTIFICATION TO ADJUDICATING AGENCY

In § 14.260, paragraph (a) is amended to read as follows:

§ 14.260 *Determination of need for institutional award and notification to adjudicating agency.* \* \* \*

(a) When under prescribed procedure (Veterans' Administration claims procedures) an institutional award and apportionment to dependents, if any, have been made in advance of reference to the chief attorney, upon receipt of VA Form 8-592, the chief attorney will make any necessary determination as to whether the institutional award and apportionment satisfactorily provide for the veteran and dependents or as to whether payments should be made to the wife under § 14.201 (a). If the veteran is hospitalized in the area of a different regional office, the chief attorney will forward the VA Form 8-592 to the chief attorney of that office, which chief attorney will determine whether any adjustment with reference to the institutional award is necessary. If the wife or other dependents reside in an area of a different regional office, the chief attorney will forward information as to the dependents, including the amount of the apportioned award, to the chief attorney of that office. If the latter chief attorney determines that a special apportionment is proper, he will submit any necessary information, with his recommendation as to the amount to be paid the dependents, to the adjudicating agency in the regular procedure. If payments are made to the wife, the chief attorney having jurisdiction of the area in which the wife resides is the principal chief attorney for purposes of § 14.201 (a). In cases of this nature adjudicated in central office, VA Form 8-592 will be forwarded to the chief attorney in the area in which the veteran is hospitalized and a separate VA Form 8-592 to the chief attorney in the area in which the dependents are located, if different from that in which the veteran is hospitalized.

(Sec. 5, 43 Stat. 608, as amended, sec. 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11a, 426, 707)

This regulation effective April 21, 1950.

[SEAL] O. W. CLARK,  
Deputy Administrator.

[F. R. Doc. 50-3328; Filed, Apr. 20, 1950;  
8:52 a. m.]

## PROPOSED RULE MAKING

### DEPARTMENT OF AGRICULTURE

#### Production and Marketing Administration

[7 CFR, Part 914]

[Docket No. AO-216]

#### HANDLING OF IRISH POTATOES GROWN IN NASSAU AND SUFFOLK COUNTIES IN NEW YORK

#### NOTICE OF RECOMMENDED DECISION AND OP- PORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing pro-

ceedings to formulate marketing agreements and marketing orders (7 CFR, Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed marketing order regulating the handling of Irish potatoes grown in the counties of Nassau and Suffolk in New York, to be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051), hereinafter called the "act". Interested parties may

file exceptions to this recommended decision with the Hearing Clerk, Room 1353 South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the tenth day after publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

*Preliminary statement.* The public hearing, on the record of which the proposed marketing agreement and the proposed marketing order (hereinafter called the "order") were formulated, was held at Riverhead, Long Island, New York, on February 27-March 2, 1950, pursuant to notice thereof which was published in the FEDERAL REGISTER (15 F. R.



741). Such notice set forth a proposed marketing agreement and order which was submitted to the Secretary of Agriculture by the Long Island Potato Committee (composed of producers and shippers of Irish potatoes in the proposed production area) with a petition for a hearing thereon.

**Material issues.** The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction;

(2) The need for the proposed regulatory program to accomplish the declared objectives of the act;

(3) The identity of the persons and transactions to be regulated;

(4) The definition of the commodity and determination of the smallest regional production area to be affected by the proposed regulatory program;

(5) The specific terms and provisions of the proposed marketing agreement and order necessary and incidental to attain the declared objectives of the act, including, among others, those applicable to:

(a) The establishment of, maintenance, composition, powers, duties, and operation of the administrative agency;

(b) The method for limiting shipments of Irish potatoes grown in the production area;

(c) The establishment of minimum standards of quality and maturity;

(d) The handling under special regulations, under certain circumstances, and the procedure applicable thereto, of specified shipments of Irish potatoes grown in the production area;

(e) The relaxation of regulations in hardship cases and the procedure applicable thereto; and

(f) The requirement that all handling of Irish potatoes grown in the production area must be in accordance with the provisions of the marketing agreement and order, and that inspection and certification of shipments of such potatoes and the payment of assessments must be accomplished in connection therewith.

**Findings and conclusions.** The findings and conclusions on the aforementioned material issues, all of which are based on the evidence introduced at the hearing and the record thereof, are as follows:

(1) A substantial percentage of the Irish potatoes grown in the counties of Nassau and Suffolk in the State of New York, hereinafter called the "production area", normally enters the current of interstate or foreign commerce, and virtually all of the remainder of such potatoes are consumed as table stock potatoes within the production area, or the State of New York, or are used for so-called diversionary purposes. The market for potatoes grown in the production area is regional in scope and prices for such potatoes at markets both within and outside the State of New York are closely related to each other and to f. o. b. shipping point prices in the production area. Every movement and sale of such potatoes, whether to a market within or outside of the State, or the production area, affects the price structure for all potatoes grown in the production area. The mere availability of a

surplus of such potatoes in the production area, which could move or be sold to satisfy market demands, tends to decrease the prices in all markets for all potatoes grown in the production area.

Shipments and sales of potatoes grown in the production area may be scheduled originally for delivery to markets within the production area or the State of New York, respectively, and then be diverted en route to markets outside of the State. Conversely, such potatoes, destined originally for markets outside of the State, may be diverted en route to markets within the State or to markets within the production area. The movement and sale of such potatoes to markets within the production area, to markets within the State of New York and to markets outside of the State of New York are, therefore, inextricably intermingled.

It is concluded, therefore, that (i) all transportation and sale (except retail sales) of Irish potatoes grown in the production area are either in the current of interstate or foreign commerce, or directly burden, obstruct, or affect such interstate or foreign commerce, and (ii) it is impractical to regulate effectively the transportation and sale of such potatoes without regulating all transportation and sale thereof.

(2) Effective January 1, 1950, parity prices for Irish potatoes are to be computed in accordance with the provisions of the Agricultural Act of 1948 and the Agricultural Act of 1949. It is hereby determined that the applicable parity price for such potatoes in 1950 will be 95 percent of the parity price determined in the manner used prior to January 1, 1950.

Seasonal average farm prices for potatoes grown in the entire State of New York have been below parity for 14 seasons and above parity for 7 seasons since 1928. Four (1942-45, inclusive) of the 7 seasons when such prices were above parity were war years. Such prices were below parity during the most recent 3-year period, 1946-48. The estimated 1949 seasonal average farm prices for such potatoes is \$1.20 per bushel, which is only 62 percent of parity.

Potato production on Long Island has almost doubled since 1933, thereby resulting in a relative decline in potato farm prices in the production area in comparison with farm prices for potatoes produced in New York State exclusive of such area, as hereinafter indicated. During the 3 seasons, 1946-48, an average of 38 percent of the total potato crop grown on Long Island has been purchased by the Government in supporting prices at 90 percent of parity, and, during such period, only 16 percent of the potatoes produced in the remainder of the State of New York were purchased in such support operations. Potato prices in 1949 were supported at 60 percent of parity, and, as of April 3, 1950, 30 percent of the Long Island potato crop has been purchased under the support program, compared with 20 percent of the potato crop grown in the remainder of the State of New York. Therefore, during recent years farm prices for potatoes have been relatively lower in Nassau and Suffolk Counties than the prevailing farm prices for potatoes grown

in the remaining counties of New York State.

Since the estimated seasonal average farm prices for the 1949 crop of potatoes in New York State is 38 percent below parity, farm prices in recent years for potatoes grown on Long Island have been low in relation to farm prices for potatoes grown in the remainder of New York State, and the indicated potato acreage for 1950 on Long Island is only slightly below that of 1949, it is anticipated that seasonal average farm prices received by growers in the production area for potatoes produced in 1950 will not exceed the prescribed parity level.

The availability of supplies of Irish potatoes in excess of all market demand therefor tends to decrease the grower's average returns from all of such potatoes. Withholding the poorer grades, and undesirable qualities and sizes of such potatoes from such markets tends to equalize market supply and the demand therefor, and tends to increase the grower's average returns for all Irish potatoes. Poor grades, undesirable qualities, and undesirable sizes of Irish potatoes available for sale in wholesale markets sell at appreciable discounts from the sale price of the better grades and desirable qualities and sizes of such potatoes, and the former not only displace the latter to a considerable extent, but the former give poor consumer satisfaction, resulting in an over-all decreased consumption of Irish potatoes. Grade, quality, and size discounts in wholesale prices of Irish potatoes are reflected in similar discounts in grower returns therefor. Similarly, decreased consumption of Irish potatoes of all grades, qualities, and sizes, decreases grower returns from such potatoes.

Poorer grades, undesirable qualities, and undesirable sizes of Irish potatoes are frequently marketed in a manner designed to indicate that such potatoes are of desirable grades, qualities, and sizes, which results in consumer dissatisfaction, confusion relevant to Irish potato values, and generally chaotic marketing conditions.

Therefore, it is concluded that a marketing agreement and order is necessary to regulate the transportation and sale of Irish potatoes grown in the production area, to establish and maintain such orderly marketing conditions therefor as will tend to establish parity prices for such potatoes. The marketing agreement and order should contain provisions for the establishment and maintenance of such minimum standards of quality and maturity and such grading and inspection requirements for Irish potatoes grown in the production area as will effectuate orderly marketing thereof in the public interest, because, even though prices received by farmers for such potatoes exceed parity, some immature potatoes of poor quality do not, under any circumstances, represent value to the consumers thereof, because of immaturity, poor quality, or both, and the returns to the farmers therefrom are negligible.

(3) (a) The act authorizes the regulation of such handling of Irish potatoes grown in the production area as is in the current of interstate or foreign com-



merce, or which directly burdens, obstructs, or affects such commerce. (Such handling is hereinafter called "in commerce.") The marketing agreement and order should regulate such handling solely to effectuate the declared policy of the act. It is essential, as a basis for such regulation, that the marketing agreement and order define a "handler," so that persons to be regulated thereunder will have notice thereof.

Common or contract carriers transporting Irish potatoes (grown in the production area and owned by another person) to market are performing a normal handling function in commerce but such handling should not be regulated under the marketing agreement and order for the reason that such carriers are not responsible for the grade, quality, and size of the commodity so transported, are not responsible for the introduction of such commodity in commerce, and their sole interest in such commodity is to transport it to destinations selected by others for a service charge. The responsibility for the grade, quality, and size of the commodity delivered to such common and contract carriers should be borne solely by the person or persons responsible for delivering such commodity to such carriers.

Other normal handling functions with respect to such potatoes, which should be regulated under the marketing agreement and order are hereinafter considered in connection with a definition of "ship", and the definition of "handler" should be synonymous with "shipper" because regulation of the handler performing each of such functions is necessary under the marketing agreement and order to effectuate the declared policy of the act. Therefore, the term "handler" should be defined to be synonymous with shipper (except a common or contract carrier of potatoes owned by another person) and to mean any person who ships potatoes.

(b) Storing, packing, washing, grading, and other processing of Irish potatoes are normal handling functions in commerce. However, it would be impracticable, if not impossible, to require persons engaged in storing, washing, packing, and grading Irish potatoes, grown in the production area, to meet minimum grade, quality, and size requirements in connection with such potatoes, under regulations issued pursuant to the marketing agreement and order, prior to such grading. Therefore, such handling activities should be exempt from regulation under the marketing agreement and order. Such exemption should be limited to storing, washing, packing, grading, and other preparatory handling functions accomplished in the production area because such activities are customarily accomplished in such area and because enlarging the exemption would serve no useful purpose. After the grading has been accomplished in connection with such potatoes, the handling activity of transporting them to market should be subject to regulation, under the marketing agreement and order, because the grade, quality, and size of such potatoes are determined by the grading process accomplished prior to such transportation and such

transportation in commerce can then be limited, on a practical basis, to such grades, qualities, and sizes of such potatoes as will tend to effectuate the declared policy of the act.

Sales of Irish potatoes, grown in the production area, in commerce are normal handling transactions which should be subject to regulation under the marketing agreement and order because such sales can be restricted to the grades, qualities, and sizes of such potatoes as will meet the requirements of regulations issued under such marketing agreement and order and because such sales introduce or continue such potatoes in commerce. Therefore, if such sellers fail to meet such requirements, they should be responsible, except as hereinafter indicated, for the introduction or continuation of Irish potatoes in commerce which fail to meet such requirements. However, if a producer of Irish potatoes, grown in the production area, sells such potatoes to a recognized packer in the production area on a grade-out basis, such sale by the producer does not constitute a normal handling transaction in commerce because such sale does not place such potatoes in commerce and because such producer relies on the recognized packer handling such potatoes in accordance with such grade, quality, and size regulations as may be in effect at the time such potatoes are actually placed in commerce. Under such state of facts, the sale from the producer to the recognized packer does not place the potatoes in commerce and the customary contemplation of the parties is that such potatoes may be stored and that they will be prepared for market prior to their introduction in commerce, i. e., washed, graded, etc. It is necessary to restrict the scope of this producer-packer sale exemption to packers operating processing facilities in the production area because such restriction conforms to customary practice in the production area and because enlarging the exemption would serve no useful purpose.

However, if a producer of Irish potatoes, grown in the production area, sells potatoes grown by him to an itinerant trucker, or any other person, for transportation to market without prior processing, such potatoes are thereby placed in commerce at the time of such sale and the producer, under such circumstances, is the first handler of such potatoes. Such producer intended, under such circumstances, that the potatoes would be placed in commerce at the time of such sale and, therefore, he should be held responsible for any failure of the commodity so sold to meet such grade, quality, and size requirements as might be in effect under the marketing agreement and order at the time of such sale.

Irish potatoes grown in the production area and consigned or otherwise placed in commerce are in the same category as similar potatoes sold in commerce because all of such potatoes must at least meet the minimum grade, quality, and size requirements in effect under the marketing agreement and order at the time they are placed in commerce to effectuate the declared policy of the act. The consignor or individual otherwise placing such potatoes in commerce

should be required, therefore, to meet such grade, quality, and size requirements.

Irish potatoes grown in the production area are frequently transported, sold, or otherwise placed or continued in commerce by more than one person. Each of such persons is responsible for introducing or continuing such potatoes in commerce and, therefore, each of such persons should be required to conduct such normal handling activities in accordance with applicable grade, quality, and size regulations, under the marketing agreement and order, to effectuate the declared policy of the act.

It is concluded, therefore, that "ship" should be defined in the marketing agreement and order to include and be applicable to all of the normal handling functions which must be subject to regulation to effectuate the declared policy of the act, that such definition should be synonymous with "handle", and that "ship" should mean to transport, sell, or in any other way to place potatoes in the current of commerce within the production area, or between the production area and any point outside thereof: *Provided*, That the definition of "ship" or "handle" shall not include or be applicable to the sale or transportation of ungraded potatoes within the production area for storing, or to the sale or transportation of potatoes to a recognized dealer or packer within the production area for the purpose of having such potatoes prepared for market.

(4) (a) It is necessary to define the commodity to be regulated by the marketing agreement and order, so that persons handling such commodity will know that their handling activities relevant thereto are subject to regulation thereunder. The act authorizes marketing agreements and orders applicable to potatoes, or to any regional or market classification thereof. Irish potatoes of all varieties grown in the production area is a regional classification of potatoes and regulation of the handling thereof will tend to effectuate the declared policy of the act. It is concluded, therefore, that "potatoes" should be defined to mean all varieties of Irish potatoes grown in the production area.

(b) A definition of "production area" is incorporated in the marketing agreement and order to specify and delineate the area in which potatoes must be grown before the handling thereof is subject to regulation. Potatoes are produced for market in each county included within the production area. Commercial production is extensive and concentrated in both counties, and it would be impractical to exclude any portion of such counties from the production area. The exclusion of any portion of such counties from the production area would create enforcement problems of such magnitude as to jeopardize the successful operation of the marketing agreement and order. It is desirable, insofar as possible, to fix the boundaries of the production area to coincide with natural boundaries, such as rivers or large bodies of water, in order to minimize the number of available routes for moving potatoes from such area by rail or truck. The produc-



tion area forms a peninsula with no contact with other Irish potato production areas by land and, therefore, approaches the ideal situation for checking compliance with and enforcement of the provisions of the marketing agreement and order. To exclude any portion of the aforesaid counties from the production area would increase the number of routes by which potatoes could move out of such area and correspondingly increase the difficulties and expense of enforcement.

Production, harvesting, and marketing conditions and methods are essentially the same throughout the production area. Such differences in these factors as do exist are relatively minor and would not justify, on the basis of reasons stated herein, the exclusion of any portion of the production area from regulation under the marketing agreement and order. The same or similar varieties of potatoes are grown throughout the production area and potatoes from each part thereof compete in markets both within and outside the area during each season. For example, potatoes grown in the western portion of the production area are shipped to market during the same period that shipments are being made from the eastern portion of the production area. Potatoes from both counties are sold in and compete in the same markets during each season. Exclusion of any portion of the production area from regulation under the marketing agreement and order would make the operation of such program unreasonably difficult and impractical. Therefore, the production area, hereinafter defined, constitutes the smallest practicable regional production area.

(5) It is necessary to define the terms hereinafter set forth, so that their applicability and meaning may be established and to preclude the necessity for redefining them when they are later used in the marketing agreement and order. The definitions of Secretary, act, person, producer, and varieties, as set forth in the notice of hearing, were not in controversy at the hearing. These terms are generally understood by members of the potato industry in the production area and the use of such terms in the marketing agreement and order is essential as the basic framework thereof.

A definition of "fiscal year" is incorporated in the marketing agreement and order to establish the beginning and end of an operating period. The establishment of such period, which should comprise a full twelve months, is necessary for businesslike administration of the marketing agreement and order and is desirable as a basis for establishing the terms of office of committee members and alternates. The date marking the end of one fiscal year and the beginning of the new should fall at a time of relative inactivity in the marketing of the potato crop and should allow sufficient time for the committee to organize and be prepared to function prior to the start of the new marketing season. Marketing of the potato crop grown in the production area begins about July 1 of each year and is completed prior to May 1 of the following year. May 1 of each year is, therefore, an appropriate date for

establishing the end of one fiscal year and the beginning of the new. Fiscal year should be defined, therefore, as hereinafter set forth.

A definition of "committee" is incorporated in the marketing agreement and order to identify the administrative body which acts as agent of the Secretary. Such committee is authorized by the act and the definition thereof, as hereinafter set forth, minimizes the use of words in the marketing agreement and order.

Definitions of "seed potatoes," "table stock potatoes," "wholesale pack" and "consumer pack" are incorporated in the marketing agreement and order because regulation is provided, under certain circumstances, differently for each. Special regulation for seed potatoes is justified because such potatoes are produced for a specialized use and the requirements of the seed market differ, in some respects, from that of the table stock market. For example, potatoes of small size are ordinarily discounted in the table stock market but may bring a premium in the seed market. The term "seed potatoes" should be defined to include such potatoes as are certified, tagged, or otherwise appropriately identified by the official seed certifying agency of the State of New York, or such other seed certifying agency as the Secretary may recognize. Table stock potatoes should be defined as all potatoes other than seed potatoes. The sum total of the table stock and seed potatoes so defined will equal "potatoes," otherwise defined in the marketing agreement and order.

The definition of "consumer pack" should include all potato packs which are prepared for ultimate sale by the retailer to the consumer in the original container. The definition of "wholesale pack" should include all potatoes which are normally dumped into bins at the retail store. In practice, the distinction between the two types of packs rests on the capacity of the container. Consumer packs commonly in use in the production area consist of 5, 10, and 15 pound bags, while wholesale packs consist of 50 and 100 pound bags. The demarcation between consumer and wholesale packs should be drawn at a specified weight rather than by naming the individual container which should fall in each category. The possible introduction of containers differing in size from those now in use makes the latter approach impractical. A net weight of 50 pounds of potatoes appears to be an appropriate dividing line between the two types of packs. Consumer pack and wholesale pack should be defined, therefore, as hereinafter set forth.

Definitions of "grade" and "size" are incorporated in the marketing agreement and order to enable all persons affected thereby to determine the requirements thereof and to interpret specifically and intelligently regulations issued in such terms. Grade and size, the essential terms in which regulations are issued, should be defined as comprehending the equivalents of the meanings assigned to these terms in (i) the official standards for potatoes issued by the United States Department of Agriculture, (ii) the State of New York Standards issued by the Commissioner of Agricul-

ture of such State, or (iii) to modification or amendment of such standards. Regulations under the marketing agreement and order can then use such terms (grade and size) with the constant meaning assigned thereto in such standards, or such modification or amendment of such terms as may be effected through amendment of such standards, or such variation of such terms as may be required at the time of regulation and spelled out in the regulation. Official inspectors are qualified to certify to the grade and size of potatoes, grown in the proposed production area, in terms of any one of the aforesaid standards, or modification, amendment, or variation thereof.

A definition of "export" is incorporated in the marketing agreement and order because different regulations thereunder are authorized for export shipments than for domestic shipments. Export markets have certain requirements which differ from the domestic market and special regulations are, therefore, justified. Export should be defined to include all shipments of potatoes outside of the continental United States.

A definition of "district" is incorporated in the marketing agreement and order to delineate the geographical divisions of the production area for the purpose of electing nominees for membership on the committee. The production and marketing problems within each of the established districts are similar and election of committee nominees on such basis will afford equitable representation to all producers in the production area. District should be defined, therefore, as hereinafter set forth.

(a) The marketing agreement and order should provide for the selection by the Secretary of an administrative committee, called the Long Island Potato Committee, composed of seven producer and three handler members. Establishment of this committee is desirable and necessary to aid the Secretary in carrying out the declared policy of the act and such committee is authorized by the act. Provision should be made for an alternate for each member of the committee because circumstances may arise when it is impossible for a member, or members, to attend particular meetings of the committee and where positions are vacant because of death, resignation, or for other reasons. In such situations it is necessary and desirable for the respective alternate to act in lieu of the member, so that there will be no interruption of committee operations and to assure that committee activities will be representative of producer and handler thinking in all districts of the production area. Such alternates should have the same qualifications as the members if the alternates are to represent the same industry factions as such members. A committee of ten members will be sufficiently small to permit it to operate in an efficient manner and at the same time, on the basis of the division of the production area into districts and representation therefrom, will be of sufficient size to give adequate representation to all producers and handlers in the production area.



Producer or handler members and alternates selected to represent districts of the production area should be producers or handlers, respectively, of potatoes (or officers or employees of a corporate producer or handler) in the district they represent and residents therein. Persons with such qualifications will be intimately acquainted with the particular problems of producing and marketing potatoes grown in such district and for that reason can be expected to present accurately the views, problems, and economic conditions of producers and handlers in such districts with respect to committee actions.

A nomination procedure is provided for in the marketing agreement and order to assure the Secretary that the names of appropriate prospective members and alternates will be brought to his attention. The nomination of prospective members and alternates by producers and handlers at meetings in the respective districts is a practical method of providing the Secretary with names of such members and alternates. Such procedure will insure that the Secretary has available a list of nominees whose qualifications have been reviewed by and acted upon by members of the industry.

The Secretary may appropriately select initial committee members and alternates from nominations which may be made by producers, handlers, or groups thereof. However, the Long Island Potato Committee, hereinafter called the "committee," does not come into existence until selection by the Secretary of the initial committee; therefore, the marketing agreement and order should provide for the selection of said initial committee in the absence of nominations.

Nomination meetings for the purpose of nominating succeeding members of the committee and their alternates should be held or caused to be held by the committee prior to March 1 of each year. Such date is approximately sixty days prior to the end of the fiscal year. By holding, or causing to be held, nomination meetings prior to such date, the committee would have adequate time to prepare and submit nominee lists to the Secretary in time for the Secretary to select the members and alternates to take office at the beginning of the new fiscal year, and, in the event a selectee declines to serve, for the Secretary to make another appointment.

At least two nominees should be designated for each position as member, and each position as alternate member, so that the Secretary will have a choice in making his selection and, in the event a selectee declines to serve, so that he will have the names of other prospective members or alternates from which to make another appointment.

Nominee lists should be supplied to the Secretary in the manner and form prescribed by him to establish administrative uniformity in the handling of such matters. Such nominations should be presented to the Secretary at least thirty days prior to the end of the fiscal year so that the selection and qualification of the members and alternates for the new term of office which begins with the new

fiscal year may be made prior to such date.

Each producer should be limited to one vote on behalf of himself, his agents, subsidiaries, affiliates, or representatives, in designating nominees for producer committee members and alternates regardless of the number of districts in which he produces potatoes. Voting on any other basis would not provide for equitable representation. If a producer could cast more than one vote by reason of operating in more than one district, such producer would have an advantage in selecting nominees over producers operating in only one district. Likewise, if more than one vote was permitted, a few large producers could dominate the elections and nominate producers not favored by a majority of producers. The producer who operates in more than one district should be permitted to elect from among the districts in which he produces potatoes, the district in which he shall vote in order that he may cast his ballot for nominees for producer committee members and alternates where he believes his main interest lies. The one-vote limitation applies to any one producer position to be filled at a nomination meeting. Each producer is allowed one vote for each such producer position as a committee member and each such producer position as a committee alternate to be filled at a nomination meeting.

Identical limitations and requirements should be applied to handler participation in nominating handler committee members and alternates, for reasons similar to the application of such limitations and requirements to producer nominations of producer committee members and alternates. However, to maintain the distinctive handler and producer representative viewpoint of committee members and alternates, each person who handles and produces potatoes should be required to elect the capacity in which he will participate in program activities, subject to the requirement that, for the purpose of nominating handler committee members and alternates, a handler shall be considered to be a person who produces not more than 25 percent of the total volume of potatoes handled by himself. Such percentage limitation will restrict participation in nominating handlers to persons primarily interested in potato handling activities.

In order that there will be an administrative agency in existence at all times to administer the marketing agreement and order, the Secretary should be allowed to select committee members and alternates without regard to nominations if the committee, for any reason, fails to carry out the nomination procedure prescribed herein. Such selection, however, should be on the basis of the representation provided in the marketing agreement and order to insure that the entire production area is fairly and adequately represented.

Any person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary a written acceptance of willingness and intention to serve in such capacity. Each person selected as a committee

member or alternate should qualify, so that the Secretary will have a means of determining if he intends to serve. This is sound operating procedure and is necessary and desirable to avoid delays in the composition of the committee. For this same reason, each member and alternate should file his acceptance within a definite time period after receiving notice of his selection. The ten-day period prescribed is reasonable for qualification and will not unduly retard composition of the committee.

Provision is made for the Secretary to fill any committee vacancies in order to maintain continuity of committee operation. The marketing agreement and order provides several alternative procedures which may be followed by the Secretary in making such selections. The administrative flexibility thus prescribed is desirable so that the Secretary will not be forestalled in making such selections and so that he may choose the most practical of the alternative means of obtaining the names of qualified persons to fill such vacancies. The Secretary should have authority to select persons to fill committee vacancies from nominations made at producer or handler meetings. Practical considerations, however, may preclude the holding of special nomination meetings for this purpose. For example, a vacancy might occur during the height of the potato planting or harvesting season when it would be difficult for the committee to secure an adequate and representative attendance at meetings. It is, therefore, appropriate that the Secretary should be authorized to make selections to fill vacancies from the nominee list last submitted by the committee prior to the occurrence of the vacancy.

It is also desirable and necessary that the Secretary should be authorized to fill committee vacancies without regard to nominations if the names of nominees to fill any such vacancy are not made available to the Secretary within thirty days after such vacancy occurs. The Secretary should have recourse to such means of filling vacancies in order to maintain continuity of committee operation and to insure that all portions of the production area are adequately represented in the conduct of committee business.

The term of office of committee members and alternates, except for initial members and alternates, should be for two years. A two-year term is desirable so that members and alternates will have adequate time to familiarize themselves with the operation of the program and thus be in a position to render the most effective service in assisting the Secretary in carrying out the declared policy of the act. A term of two years is also the minimum term that can be established if provision is to be made for staggered terms of office. A term of more than two years should not be established since producers and handlers should have an opportunity to vote for a change in their representation at frequent intervals.

Provision is made in the marketing agreement and order for staggered terms of office of committee members and alternates. Under this provision, one-half of the committee in office at the end of



a fiscal year will continue in office through the next fiscal year. The establishment of such staggered terms will promote administration of the program in the most effective and efficient manner. By having staggered terms of office, the new members and alternates, constituting one-half of the committee membership, selected to serve at the beginning of each fiscal year will benefit from the guidance of the experienced members who carry over. This provision for the carry over of experienced members will help insure continuity in the policies and procedures relating to the administration of the marketing agreement and order. Such continuity is an essential ingredient in the successful administration of the marketing agreement and order.

To facilitate the establishment of staggered terms of office, the marketing agreement and order provide that the terms of office of five members and alternates of the initial committee shall be for one year, and the terms of office of five members and alternates shall be for two years. Such provision is fair and equitable and will permit the establishment, on a practical basis, of a committee with the members and alternates thereon holding office for staggered terms.

A quorum of the committee should consist of six members (including one handler member), and six concurring votes (including the vote of at least one handler member) should be necessary for passing any motion or approving any action of the committee. These requirements are reasonable and are necessary to insure that any action of the committee will be representative of a majority of the committee and that the interests of both producers and handlers will be reflected in committee actions. To require seven members to be present at meetings of the committee and to concur in committee actions, as was provided in the notice of hearing, might result in a stalemate if four members, representing a minority of the committee, refused to attend meetings or to approve actions favored by the majority of the members.

Only members present at an assembled meeting of the committee, or alternate members acting for members, should be entitled to vote. This requirement will encourage greater attendance at meetings and will promote fuller discussion of committee actions. Provision is made, however, for meetings of the committee by telephone, telegraph, or other means of communication, to meet practical situations where rapid decision with respect to committee actions is necessary. Such emergency situations occur quite frequently in the marketing of potatoes grown in the production area. Any votes cast at such meetings should be promptly confirmed in writing to provide a record of the action taken.

The apportionment and selection of producer members and alternate members of the committee by districts in the manner set forth in the marketing agreement and order will provide fair and equitable representation of all producers in the production area. The representation provided gives weight, on as fair and reasonable a basis as possible, to the various factors, such as acreage, number

of producers, size of district, and variation in producing and marketing conditions, necessary to establish assurance of a fair and equitable representation of all portions of the production area on the committee.

Selection of one committee producer member and alternate from each district one through five, hereinafter defined, and two committee producer members and alternates from District No. 6, hereinafter defined, will afford fair and equitable representation on the committee for all producers in the production area, giving appropriate weight to the acreage, production, and the different methods of producing potatoes in the entire production area. The so-called handler districts defined in the notice of hearing were confusing and should be eliminated. Potatoes, grown in districts 1 through 4, are generally prepared for market and shipped to market by handlers, while most of the potatoes grown in Districts 5 and 6 are prepared for market and shipped to market by the producers thereof. To provide a fair and equitable representation of all handlers in the production area, the handler representation on the committee should be changed to two handler members and alternates from districts 1 through 4, and one handler member and alternate from Districts 5 and 6. This representation gives appropriate weight, on a fair and reasonable basis, to the acreage, production, and the different methods of handling potatoes in the production area, necessary to establish assurance of a fair and equitable representation on the committee for all handlers in the production area.

Committee members and alternates should be compensated at a rate not to exceed \$10.00 per day, or portion thereof, and should be reimbursed for expenses necessarily incurred when acting on committee business. Since such members and alternates will be serving in the interest of the potato industry in the production area, they should not be required to bear such expenses as they incur in attending to committee business. Compensation at not to exceed the rate prescribed herein will offset, to some extent, the losses which such members and alternates will sustain through committee service.

The powers of the committee, as set forth in the notice of hearing, should be granted to the committee because such powers are authorized by the act and are essential to the committee in order for it to discharge its responsibilities under the marketing agreement and order.

Each and all of the duties set forth in the notice of hearing should be given to the committee because such duties are necessary and essential to the accomplishment of the declared policy of the act and for the committee to discharge its obligations to the Secretary. These duties are similar to duties given to other administrative committees under other marketing agreement and order programs.

(b) The declared policy of the act is to establish and maintain such orderly marketing conditions for potatoes, among other commodities, as will tend to establish parity prices for such potatoes. The

regulation of shipments of potatoes by grade, size, or quality, authorized in the marketing agreement and order, provides a means of carrying out such policy.

The procedures which are outlined in the marketing agreement and order for the development and institution of marketing policies relating to grade, size, or quality regulations provide a practical basis for the committee to obtain appropriate and adequate information regarding marketing problems. In turn, members of the industry are also provided an appropriate and adequate means of being informed regarding the policies and regulations the committee recommends and, if issued, the regulations that are effective. The factors which the committee should take into consideration in developing its marketing policy are the ones commonly or usually taken into account by growers and handlers in marketing potatoes.

In order that the Secretary may most effectively carry out his responsibilities in connection with the marketing agreement and order, it is provided that the committee should prepare and submit to the Secretary a report on its proposed policy, or amendments thereto, for the marketing of potatoes during each fiscal year. The initial marketing policy in each fiscal year should be prepared and submitted to the Secretary by June 15, to give all interested parties the maximum notice of regulatory possibilities, consistent with affording the committee sufficient time to prepare sound policies. Further provision should be made for the committee to make available the contents of such reports to producers and handlers in the production area.

In making recommendations for regulation, it is provided that the committee shall investigate enumerated relevant factors of supply and demand for potatoes. This requirement is necessary so that the committee will be in the best position to develop sound and practical recommendations for regulation and to advise the Secretary with respect to such supply and demand conditions. The committee will be well qualified to determine marketing conditions for potatoes produced in the production area and to recommend specific regulations which will tend to effectuate the declared policy of the act.

The limitation of shipments of the poorer grades, qualities, and less desirable sizes of potatoes grown in the production area will tend to increase the prices of the more desirable grades, qualities, and sizes, and to increase the returns to producers therefrom. Less desirable sizes include not only small potatoes but also excessively large potatoes. Such limitation of shipments will also help to improve the long-run demand for and competitive position of potatoes grown in the production area.

It is a necessary and desirable exercise of the authority granted by the act for the committee to recommend and the Secretary to establish grade, size, or quality regulations for any or all portions of the production area, and different grade, size, or quality regulations for different packs, for different time periods within the shipping season, for different varieties, or any combination of the fore-



going. Such administrative flexibility is needed in the marketing agreement and order to effectuate the declared policy of the act through the issuance of appropriate regulations adapted to different and changing circumstances encountered in the marketing of potatoes.

Authority to issue different regulations applicable to different portions of the production area is necessary because a particular portion or portions of such area may have adverse growing conditions which cause an abnormally high percentage of the potatoes grown therein to fall within restricted grades, sizes, or qualities. To meet the administrative problems that would arise from a situation of this kind and to provide fair and equitable regulation of all shipments of potatoes grown in the production area, it would be appropriate to establish a less restrictive regulation applicable to such affected portion or portions of the area.

Supply and demand conditions for potatoes are subject to frequent and substantial changes during the course of a particular marketing season. For this reason, it is absolutely essential that the committee have authority to recommend different regulations at any time during the season in order to carry out the declared policy of the act.

Different regulations should be authorized for different varieties of potatoes because varieties differ in particular characteristics such as shape and in susceptibility to certain defects. For these reasons, an appropriate grade and size regulation for one variety might not be appropriate for another. Moreover, a new variety may be introduced in the area which should be regulated differently than the varieties now being grown.

It is necessary to provide for different regulations, under appropriate circumstances, for consumer packs than for wholesale packs to improve and maintain consumer acceptance for potatoes grown in the production area. Consumer packs of potatoes require different size composition than wholesale packs; authority should be provided, therefore, to establish regulations with respect to minimum or maximum sizes of potatoes, or both, differently for consumer packs than for wholesale packs. Consumer acceptance of potatoes is more adversely affected by inferior grades and undesirable sizes in consumer packs than in wholesale packs. In the case of consumer packs, the consumer accepts the package relatively "sight unseen" and does not have an adequate opportunity to make a selection of individual potatoes. The consumer, however, can make the desired selection from bulk displays made up by dumping the contents of wholesale packs into a bin, as is standard procedure in the retail grocery business. Consumers demand a better and more uniform grade, size, and quality of potatoes in consumer packs than in wholesale packs and failure to maintain such grade, size, and quality in consumer packs will disproportionately decrease the total returns of growers of potatoes in the production area.

The Secretary, upon the recommendation of the committee, or other available information, should be authorized to modify, suspend, or terminate grade,

size, or quality regulations with respect to shipments outside of the normal commercial markets for table stock potatoes. The committee should be well qualified, because of the experience and knowledge of individual members, to recommend such modifications, suspensions, or terminations as will be in the best interests of the potato industry in the production area and which will tend to effectuate the declared policy of the act. Shipments of potatoes to the noncompetitive outlets, hereinafter set forth, which otherwise could not be marketed under the regulations, would tend to increase the total returns of potato growers in the production area.

The nature of the demand for seed potatoes differs from the demand for table stock in that small sizes are preferred for seed, whereas the same sizes are discounted in the table stock market. However, certain characteristics which constitute grade defects in table stock potatoes do not necessarily detract from the value of seed potatoes. It is desirable, in order to promote more orderly marketing conditions for potatoes, to authorize the committee to recommend and the Secretary to modify, grade, size, or quality regulations with respect to seed potatoes, or to suspend or terminate regulations relating to such seed shipments.

Export outlets, while relatively small, are an important factor in the demand for potatoes grown in the production area. Since certain export markets offer premium prices for certain grades, sizes, or qualities of potatoes which usually sell at a discount in the domestic market, it is desirable that the committee be authorized to recommend, and the Secretary to establish, modifications, suspensions, or terminations of regulations applicable to export shipments. Such shipments to export would tend to increase returns to producers in the production area and result in added increment to the value of the crop, thereby tending to effectuate the declared policy of the act.

Substantial shipments of potatoes to the Federal Government have been made in recent years in carrying out price support obligations administered by the Secretary. It is necessary, therefore, to authorize the committee to recommend and the Secretary to modify, suspend, or terminate regulations to facilitate such shipments, which will increase grower returns from potatoes grown in the production area and thereby tend to effectuate the declared policy of the act.

The committee should be authorized to recommend and the Secretary to modify, suspend, or terminate regulations with respect to potatoes shipped for manufacture or conversion into specified products because such shipments, such as glucose, alcohol, etc., reduce the supply of such potatoes available for shipment to the table stock market and, therefore, such shipments tend to increase the total value of the entire crop of potatoes. The committee should be given authority to recommend which shipments should be classed as being for manufacture or for conversion into specified products because committee members are in an advantageous posi-

tion to know whether and when such end products constitute outlets that are not competitive with table stock potatoes. It is concluded that the committee should have authority to recommend and the Secretary to specify such products because some products compete on a basis virtually equal to table stock potatoes, and, further, because new end products may be developed from time to time, some of which may, and some of which may not be competitive with table stock potatoes.

The committee should be authorized to recommend that shipments of potatoes for livestock feed, or for other specified purposes, should not be regulated, or to recommend modification or suspension of regulations governing such shipments. Livestock feed provides an outlet for potatoes that is not competitive with the table stock market. When such outlets are available it will tend to promote objectives sought under regulation to exempt shipments for this purpose from grade, size, and quality regulations. The committee should be authorized to recommend that shipments of potatoes for a particular purpose or type of utilization should not be regulated, or to recommend modification or suspension of regulations with respect to such shipments, when it is found that such shipments are not competitive with table stock shipments in commerce. The Secretary, on the basis of such recommendations, or other available information, should be authorized to modify, suspend, or terminate regulations with respect thereto, when such action will tend to effectuate the declared policy of the act.

The aforesaid authorizations for the modification, suspension, or termination of regulations with respect to shipments of potatoes for each enumerated special purpose, should permit the modification, suspension, or termination of one or more regulatory provision and the simultaneous retention of other regulatory provisions, because such shipments may require expenditures of administrative funds to police and they may compete, to some extent, with shipments of potatoes for table stock purposes.

The administrative difficulties of regulating small shipments, under some circumstances, may make it uneconomical, undesirable, and impractical to attempt to do so under the marketing agreement and order. Under such circumstances, which can be readily determined by the committee, regulation of such small shipments would not tend to effectuate the declared policy of the act. It is concluded that the committee should be authorized to recommend, and the Secretary to establish, the minimum quantities which should not be subject to any or all regulations issued under the marketing agreement and order. It is necessary to permit the maintenance of one or more regulatory requirements, while relieving such minimum quantities from other regulatory requirements. It may be desirable, for example, for the inspection requirement to be waived on small shipments but that handlers be required to pay assessments or comply with grade, size, and quality regulations with respect



to such shipments. This provision provides authority to arrange flexible operation of the marketing agreement and order to meet unusual situations in a practical way. Such authority will promote more orderly marketing and prevent the imposition of undue burdens upon handlers making such small shipments.

The requirement that the Secretary shall notify the committee of any regulations, or of any modifications, suspensions, or terminations of regulations, is appropriate and necessary to enable the committee to be informed of such actions. The committee's obligation to give reasonable notice (which shall be given through newspapers, radio, mail, or such combinations thereof as may be deemed desirable by the committee) of orders issued by the Secretary is appropriate and necessary for proper and efficient administration of the marketing agreement and order.

Authority should be provided for the committee to recommend, and the Secretary to prescribe, adequate safeguards to prevent any potatoes, including seed potatoes, which may be subject to special modified, suspended, or terminated regulation, from entering the current of commerce contrary to the provisions hereof. Such safeguards, among others, may include inspection to provide the committee with an accurate record of the grade, size, and quality of such shipments of potatoes. In order to maintain appropriate identification of such shipments of potatoes, the committee should be authorized to issue Certificates of Privilege to handlers thereof and to require that such handlers obtain such certificates on all such shipments. Certificates of Privilege should be issued in accordance with rules and regulations established by the Secretary, on the basis of committee recommendations, or other available information, so that the issuance of such certificates may be handled in an orderly and efficient manner.

The committee also should be authorized to deny or rescind Certificates of Privilege when such action is necessary to prevent abuse of the privileges conferred thereby. The committee should be authorized to take such rescinding or denial action upon evidence satisfactory to the committee that a handler to whom a Certificate of Privilege has been issued has handled potatoes contrary to the provisions thereof. Action by the committee denying a handler such certificates should be in terms of a specified time period. Handlers affected by the aforesaid rescinding or denial action should have the right of appeal to the committee for reconsideration.

The Secretary should have the right to modify, change, alter, or rescind any safeguards prescribed or any Certificates of Privilege issued by the committee in order that the Secretary may retain all rights necessary to carry out the declared policy of the act. The Secretary should give prompt notice to the committee of any action taken by him in connection therewith and the committee should currently notify all persons affected by the indicated action.

The committee should maintain detailed records relevant to Certificates of

Privilege and should submit, when requested to do so, reports thereon to the Secretary to supply pertinent information requisite for him to discharge his duties under the act and the marketing agreement and order.

(c) The committee should be authorized to recommend, and the Secretary to establish, such minimum standards of quality and maturity and such grading and inspection requirements during any and all periods of marketing, when potato prices are above parity, as will be in the public interest. Some potatoes are of such defective quality that they do not give consumer satisfaction at any time because of the great waste and time involved in their preparation. The cost of such potatoes to the consumer per edible unit is frequently greater than the cost per edible unit of potatoes of better quality.

The shipment of immature potatoes causes an adverse consumer reaction to potatoes from the production area and tends to demoralize the market for later shipments of mature potatoes. There is a tendency for immature potatoes to deteriorate in transit and to develop undesirable cooking properties. Limitation of shipment of such potatoes would be in the interests of both consumers and of the potato industry in the production area. Continued shipments of low quality and immature potatoes may result in a permanent reduction in demand for potatoes grown in the production area.

(d) Provision is made in the marketing agreement and order for inspection by the Federal-State Inspection Service of all shipments of potatoes grown in the production area, except as hereinafter indicated. Inspection certificates issued by this service are a common and usual means of specifying the grade, size, and quality of potatoes and are generally used and recognized in the production area. Such certificates constitute prima facie evidence of the grade, size, and quality of the commodity to which they apply and they are accepted in court as such evidence. It is necessary to provide the handler, the committee, or any other interested party with a means of determining whether a shipment, or shipments, of potatoes complies with the requirements of any particular grade, size, and quality regulation which may be in effect under the marketing agreement and order. Inspection certificates provide such a means. The Federal-State Inspection Service can provide reasonably prompt inspection at all points within the production area at a reasonable fee, if inspection is requested at a reasonable time prior to the anticipated sale or transportation of the commodity to be inspected. Effective regulation of the handling of potatoes grown in the production area requires that the grade, size, and quality of each shipment thereof be authoritatively established. Accordingly, the marketing agreement and order should provide, except as hereinafter indicated, that no handler shall ship potatoes unless, prior thereto, such shipment was inspected by the aforesaid Service.

Many of the potatoes grown in production area Districts 5 and 6 begin their movement to market at about 3:00 p. m.,

in so-called mixed-load and small-lot shipments. Such mixed-load shipments contain potatoes and other vegetables in varying quantities, depending upon the shipper's evaluation of market requirements on the day of shipment and other marketable produce available to him. The handler of such mixed-load shipments is invariably the producer of the potatoes involved therein. Where the quantity of potatoes involved in such mixed-load and small-lot shipments is relatively small, modification, suspension, or termination of the Federal-State inspection requirements with respect thereto should be effected, in appropriate circumstances, on the basis of and for the reasons hereinbefore indicated for so-called minimum quantity or "small shipments."

When the quantity of potatoes contained in a mixed-load or small-lot shipment exceeds the aforesaid minimum quantity, the handler of such shipment may, under some circumstances, experience some inconvenience in procuring inspection of such shipment prior to the handling thereof. Such inconvenience can arise by virtue of a sudden market change, receipt of an unanticipated potato order immediately prior to the departure of a produce truck for the market area, and other similar situations. However, if a producer-handler is engaged in supplying produce, including potatoes, to marketing areas relatively near to his farm, he knows, at the beginning of each marketing season, that he can reasonably anticipate occasional occurrences of the aforesaid types of inconvenient situations during the course of such marketing season. Insofar as one of such situations only requires the addition of a small lot of potatoes to a mixed-load produce shipment, such situation will cause no inspection inconvenience because of the minimum quantity or small-lot provisions hereinbefore referred to.

The aforesaid situations need not always cause inspection inconveniences when the volume of potatoes involved exceeds the minimum quantity or small-lot maximum, because the producer-handler can anticipate the time of digging potatoes grown by him and, at the time of anticipating such digging, he can make a request for inspection which can be supplied to him at the time of digging. When an inspector is available at the time of digging, a sufficient quantity of potatoes can be dug, graded, and inspected to afford a producer-handler inspection and certification of a sufficient quantity of potatoes to satisfy his potential handling requirements for the day of digging and a number of days subsequent thereto. Of course, if a producer-handler does not anticipate digging potatoes, for example, until two minutes prior to the initiation of such operation, it would be unreasonable to expect any inspection service to supply an inspector on the basis of a two-minute notice.

Although the foregoing indicates that virtually all of the so-called inconvenient situations can be eliminated by reasonable cooperation of producer-handlers and the inspection service in connection with mixed-load produce shipments, in



each of which the potatoes exceed the aforesaid minimum quantity, there may be some situations of the general type hereinbefore indicated, which cannot be solved on any of the bases hereinbefore set forth. Insofar as such situations cannot be so solved, it is necessary and desirable that the present marketing practices applicable thereto should be modified to assure that only those grades, sizes, and qualities of potatoes, as evidenced by inspection certificates applicable thereto, move to market as will tend to effectuate the declared policies of the act. The only way such objective can be reasonably attained, on a uniform and equitable basis, is to require that all shipments of potatoes, except as hereinbefore otherwise indicated, must be inspected and certified prior to shipment. There is no persuasive showing in the hearing record that such requirement would constitute a confiscatory burden on any producer-handler to be affected thereby, because the record indicates that many of the so-called emergencies involved in handling mixed-load produce shipments from the production area can be eliminated by cooperation with the inspection agencies, and the remainder of such so-called emergencies, even though they may result in some delay in such shipments reaching the market, will not preclude the handling of such shipments in a manner tending to effectuate the declared policies of the act.

Copies of inspection certificates issued pursuant to the requirements of the marketing agreement and order should be supplied to the committee promptly, so that it may promptly discharge its administrative responsibilities thereunder. In instances where potatoes previously inspected are regraded, resorted, or in any other way subjected to further preparation for market in the production area, such potatoes should be and are required to be inspected and a copy of the inspection certificate should be furnished to the committee because such further preparation for market destroys the validity of the original inspection certificate as evidence of the grade, size, and quality of the potatoes involved. All of the aforesaid requirements are necessary for proper administration and enforcement of the provisions of the marketing agreement and order.

(e) Certain hazards are incidental to the production of potatoes grown in the production area which are beyond the control or reasonable expectation of the producer of such potatoes. Because of these circumstances and to prevent undue hardship among producers with respect to any regulations which may be issued under the marketing agreement and order, the committee should be authorized to issue exemption certificates to producers to permit each producer to handle or cause to be handled his equitable proportion of all potatoes shipped from the production area if the grade, size, or quality of his potatoes have been adversely affected by conditions beyond his control and by conditions beyond reasonable expectation. In determining such equitable proportion, the committee should be authorized to estimate the average percentage of production which has been and will be shipped by all pro-

ducers in the producer's immediate area of production under a given regulation (which will be such equitable proportion). For such purpose, the committee will need a representative sample of the grade, size, and quality composition of the total crop in such area, a part of which, at any given time during the shipping season, may have been harvested and marketed and another part unharvested.

Similar hazards are prevalent in the handling of potatoes grown in the production area and equitable treatment of each handler, under the marketing agreement and order, requires that he be permitted to handle as large a proportion of his storage holdings of ungraded potatoes (acquired during or immediately following the digging season) as the average proportion of ungraded storage holdings handled by all handlers in an applicant-handler's immediate shipping area, if the grade, size, or quality of such applicant's potatoes have been adversely affected by conditions beyond the applicant's control and by conditions beyond reasonable expectation. Restricting the aforesaid exemptions to cases involving conditions beyond the producer's and handler's control, respectively, and to conditions beyond reasonable expectation, is necessary to preclude the granting of such hardship exemptions where the producers and handlers could have avoided the condition responsible for their hardships.

The committee, by reason of its knowledge of the conditions and problems applicable to the production and handling of potatoes grown in the production area and the information which it will have available in each case, will be well qualified to judge each producer's, and handler's application in a fair and equitable manner and to fix the quantity of exempted potatoes which each such applicant may handle or cause to be handled.

The provisions contained in the notice of hearing relevant to the procedure to be followed in issuing exemption certificates, in transferring such certificates, in investigating exemption claims, in appealing exemption claim determinations, and in recording and reporting exemption claim determinations to the Secretary, are necessary to the orderly and equitable operation of the marketing agreement and order and they should, therefore, be incorporated in the marketing agreement and order.

Provision should be made for the Secretary to modify, change, alter, or rescind the procedure established by the committee for granting of exemptions, and any exemptions granted pursuant to such procedure. This is necessary to guard against inequities in the granting of exemptions and to preclude the issuance of exemption certificates in unjustifiable cases.

(f) The operation of the committee and the marketing agreement and order require funds for the payment of necessary administrative expenses. The committee is the logical agency to recommend what expenses are necessary and appropriate for operation of the program. It is also necessary that assessments be levied on the handlers to meet such expenses since no other source of

funds is authorized under the act for defraying such expenses. The committee should be required, each year, to prepare and submit to the Secretary a budget showing its estimated expenses and a proposed rate of assessment. This is desirable in order that the Secretary will have the best possible information on probable expenses of the committee and the proper rate of assessment to be levied to meet such expenses.

Assessments should be levied against each handler who first ships potatoes, herein called the first handler, to establish an appropriate basis for each handler paying his pro rata share of necessary administrative expenses. Each first handler is required to pay assessments to the committee, at its request, to conform with normal business procedures and to preclude multiple assessments in connection with individual shipments of potatoes. Each first handler's pro rata share of such expenses shall be a percentage of such expenses equal to the percentage his total season's first handling of potatoes subject to regulation is of the total season's handling of potatoes subject to regulation by all first handlers. The Secretary, upon the basis of the committee's recommendation, or other available information, should fix a rate of assessment per given unit of shipment which first handlers must pay as an equitable share of the expenses of administering the program.

The Secretary should be authorized to increase the rate of assessment which first handlers should pay if he finds, during the course of a given season, that the then current rate of assessment is insufficient to cover expenses. Such increased rate should apply on a retroactive basis to all assessable potatoes previously handled during that season to preclude inequities among handlers.

Revenues collected through assessments in excess of expenses for any fiscal year should, at the end of such fiscal year, be credited pro rata to each contributing handler's account, or, upon demand, refunded to any handler.

The committee should be authorized to maintain, with the approval of the Secretary, suits in its own name, or in the name of its members, against any handler for collection of such handler's pro rata share of the committee's expenses. Such authority is contained in the act.

The committee should be permitted to make such expenditures during a fiscal year as are authorized and are necessary for effective administration and proper functioning of the marketing agreement and order program, within the limitations of the budget submitted by the committee and approved by the Secretary for such year.

Any committee member or alternate responsible for or having in his custody any of the property, funds, records, or any other possessions of the committee, should be required to transfer it to his successor or to such person as may be designated by the Secretary, and to execute such instruments as may be necessary to effect such transfers. The committee, and such members and alternates, should be required to give an accounting for all committee receipts and disbursements and for all committee



property whenever requested by the Secretary and whenever, in the case of members and alternates, they cease to be such members or alternates. These transfer and accounting requirements represent sound business procedure and are necessary in order that there will be an unbroken succession in committee possessions.

(g) For proper and efficient administration of the marketing agreement and order, the committee needs information on potatoes with respect to supplies, movement, prices, and sundry other relevant factors which are best obtainable from handlers. The committee should be authorized to request, with the approval of the Secretary, and every handler should be required to maintain records of such facts and furnish to the committee upon request, with the approval of the Secretary, such information therefrom as may be required for the committee to exercise its powers and perform its duties under the marketing agreement and order. The committee should be authorized to audit such records to verify reports submitted as aforesaid. The Secretary should retain the right to modify, change, alter, or rescind any requests by the committee for information in order to protect handlers from unreasonable requests for reports.

(h) The provisions of sections 8 through 20, as published in the FEDERAL REGISTER of February 10, 1950 (15 F. R. 741) are common to marketing agreements and orders now operating. Each of such sections sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the marketing agreement and order. These provisions are incidental to, and not inconsistent with section 8c (6) and (7) of the act, and are necessary to effectuate the other provisions of the marketing agreement and order and to effectuate the declared policy of the act. The substance of such provisions, therefore, should be included in the marketing agreement and order.

**General findings.** Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The order, as hereinafter set forth, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) Such order regulates the handling of potatoes grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of industrial and commercial activity specified in, a proposed marketing agreement upon which a hearing has been held;

(3) The said order is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act; and the issuance of several orders applicable to any subdivision of the production area would not effectively carry out the declared policy of the act;

(4) The said order prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the pro-

duction and marketing of potatoes grown in the said area;

(5) All handling of potatoes, as defined in said order, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

**Rulings on proposed findings and conclusions.** Interested parties were allowed until March 25, 1950, to file briefs with respect to findings of facts and conclusions based on evidence introduced at the hearing. No such brief was filed; hence, no ruling is necessary.

**Recommended marketing agreement and order.** The following marketing agreement and order are recommended as the detailed means by which the aforesaid conclusions may be carried out.

#### DEFINITIONS

§ 914.1 **Secretary.** "Secretary" means the Secretary of Agriculture of the United States, or any officer, or employee of the United States Department of Agriculture, who is, or may hereafter be authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 914.2 **Act.** "Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051).

§ 914.3 **Person.** "Person" means an individual, partnership, corporation, association, or any organized group or business unit.

§ 914.4 **Production area.** "Production area" means all territory included within the boundaries of Nassau and Suffolk Counties in the State of New York.

§ 914.5 **Potatoes.** "Potatoes" means all varieties of Irish potatoes grown within the production area.

§ 914.6 **Handler.** "Handler" is synonymous with shipper and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes.

§ 914.7 **Ship.** "Ship" or "handle" means to transport, sell, or in any other way to place potatoes in the current of commerce within the production area, or between the production area and any point outside thereof; *Provided*, That the definition of "ship" or "handle" shall not include or be applicable to the sale or transportation of ungraded potatoes within the production area for storing, or to the sale or transportation of potatoes to a recognized dealer or packer within the production area for the purpose of having such potatoes prepared for market.

§ 914.8 **Producer.** "Producer" means any person engaged in the production of potatoes for market.

§ 914.9 **Fiscal year.** "Fiscal year" means the period beginning on May 1 of each year and ending April 30 following.

§ 914.10 **Committee.** "Committee" means the administrative committee, called the Long Island Potato Committee, established pursuant to § 914.22.

§ 914.11 **Varieties.** "Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 914.12 **Seed potatoes.** "Seed potatoes" means and includes all potatoes officially certified and tagged, marked or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the State of New York or such other seed certification agencies as the Secretary may designate.

§ 914.13 **Table stock potatoes.** "Table stock potatoes" means and includes all potatoes not included within the definition of "seed potatoes."

§ 914.14 **Wholesale pack.** "Wholesale pack" means a unit of fifty pounds net weight or more of potatoes contained in a bag, crate, or any other type of container.

§ 914.15 **Consumer pack.** "Consumer pack" means a unit of less than fifty pounds net weight of potatoes contained in a bag, crate, or any other type of container.

§ 914.16 **Grade.** "Grade" means any one of the officially established grades of potatoes, and "size" means any one of the officially established sizes of potatoes, as defined and set forth in:

(a) The United States Standards for Potatoes issued by the United States Department of Agriculture (14 F. R. 1955, 2161), or amendments thereto, or modifications thereof, or variations based thereon;

(b) The United States Consumer Standards for Potatoes issued by the United States Department of Agriculture (12 F. R. 7281), or amendments thereto, or modifications thereof, or variations based thereon;

(c) State of New York Standards for Potatoes issued by the Commissioner of Agriculture, State of New York, or amendments thereto, or modifications thereof, or variations based thereon.

§ 914.17 **Export.** "Export" means shipment of potatoes beyond the boundaries of continental United States.

§ 914.18 **District.** "District" means each one of the geographical divisions of the production area established pursuant to § 914.24.

§ 914.19 **Part and subpart.** "Part" means the order regulating the handling of Irish potatoes grown in Nassau and Suffolk Counties, New York, and all rules, regulations, and supplementary orders issued thereunder, and the aforesaid order shall be a "subpart" of such "part."

#### COMMITTEE

§ 914.22 **Establishment and membership.** (a) The Long Island Potato Committee, consisting of 10 members of whom 7 shall be producers and 3 shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Persons selected as committee members or alternates to represent producers shall be individuals who are pro-



ducers and residents in the respective district for which selected. Persons selected as committee members or alternates to represent handlers shall be individuals who are handlers and residents in the district or one of the districts for which selected. Officers or employees of corporate producers and handlers can be selected as committee members and alternates if their corporation produces or handles, respectively, potatoes in the district for which such persons are selected, and if such persons reside in the district for which they are selected.

**§ 914.23 Term of office.** (a) The term of office of committee members and alternates shall be two fiscal years: *Provided*, That the terms of office of one-half of the initial members and their respective alternates shall be one fiscal year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the term of office and continuing until the end thereof, and until their successors are selected and have qualified.

**§ 914.24 Districts.** (a) For the purpose of selecting committee members and alternates, the following districts of the production area are hereby established:

*District No. 1.* Shall include that part of Suffolk County included in the township of East Hampton, and that part of the township of Southampton situated east of the Shinnecock Canal.

*District No. 2.* Shall include the township of Southold and the township of Shelter Island in Suffolk County.

*District No. 3.* Shall include the township of Riverhead in Suffolk County.

*District No. 4.* Shall include the township of Brookhaven and that part of the township of Southampton situated west of the Shinnecock Canal in Suffolk County.

*District No. 5.* Shall include the township of Smithtown, the township of Islip, the township of Huntington, and the township of Babylon, in Suffolk County.

*District No. 6.* Shall include Nassau County.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided*, That in recommending any such changes in districts or representation the committee shall give consideration to: (1) The relative importance of new areas of production; (2) changes in the relative position, with respect to production, of existing districts; (3) the geographic locations of areas of production, insofar as they affect the efficiency of administering the marketing agreement and order; and (4) other relevant factors: *Provided further*, That there shall be no change in the total number of committee members and alternates, or in the total number of districts.

**§ 914.25 Nomination.** The Secretary may select the members of the committee and their respective alternates from nominations which may be made in the following manner:

(a) Nominations for initial committee members and alternates may be submitted by producers, handlers, or groups thereof, and such nominations may be by virtue of elections conducted by groups of producers and by groups of handlers.

(b) In order to provide nominations for succeeding committee members and alternates:

(1) The committee shall hold or cause to be held prior to March 1 of each year, after the effective date of this subpart, a meeting or meetings of producers in each of the districts designated in § 914.24, in which producer committee vacancies will occur at the end of the then current fiscal year. In like manner, the committee shall hold or cause to be held prior to March 1 of each year, after the effective date of this subpart, a meeting or meetings of handlers to nominate handler committee members and alternates to fill vacancies which will occur at the end of the then current fiscal year.

(2) At each such meeting at least two nominees shall be designated for each position as member and for each position as alternate member on the committee which is vacant or which is to become vacant at the end of the then current fiscal year.

(3) Nominations for committee members and alternate members shall be supplied to the Secretary in such manner and form as he may prescribe, not later than 30 days prior to the end of each fiscal year.

(4) Only producers may participate in designating nominees for producer committee members and alternates and only handlers may participate in designating nominees for handler committee members and alternates. For the purpose of designating nominees for handler committee members and alternates, a handler shall be considered to be a person who produces not more than 25 percent of the total volume of potatoes handled by himself; each person who is both a handler and a producer may vote either as a handler or as a producer and may elect, subject to such 25 percent limitation, the group in which he votes.

(5) Each producer and each handler of potatoes is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives, for producer or handler committee members and alternates, respectively: *Provided*, That producers in more than one district shall elect the district in which they will participate in nominating producer committee members and alternates, and handlers in districts 1, 2, 3, and 4, and in districts 5 and 6, shall elect the group of handling districts in which they will participate in nominating handler committee members and alternates: *Provided further*, That an eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit a voter to cast one vote for each position to be filled in the group of districts in which he elects to vote.

**§ 914.26 Selection.** The Secretary shall select one producer member of the committee with his respective alternate from each of District Nos. 1, 2, 3, 4,

and 5, and two producer members of the committee with their respective alternates from District No. 6, as such districts are defined in § 914.24. The Secretary shall select two handler members with their respective alternates from District Nos. 1, 2, 3, and 4, and one handler member and his alternate from District Nos. 5 and 6. Each person selected as a handler member or alternate shall not produce more than 25 percent of the potatoes handled by himself.

**§ 914.27 Failure to nominate.** If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 914.25, the Secretary may select the committee members and alternates without regard to nominations, which selection shall be on the basis of the representation provided for in § 914.26.

**§ 914.28 Acceptance.** Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

**§ 914.29 Vacancies.** To fill any vacancy occasioned by the failure of any person selected as a committee member or alternate to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected from nominations made in the manner specified in § 914.25, or the Secretary may select such committee member or alternate from previously unselected nominees on the current nominee list. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in § 914.26.

**§ 914.30 Alternate members.** An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

**§ 914.31 Procedure.** (a) Six members, including at least one handler member of the committee shall be necessary to constitute a quorum, and six concurring votes, including at least a concurring vote of one handler member, shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided*, That all votes shall be cast in person at assembled meetings.

**§ 914.32 Expenses and compensation.** Committee members and alternates shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part, and shall receive compensation at a rate to be



## PROPOSED RULE MAKING

determined by the committee, which rate shall not exceed \$10.00 for each day, or portion thereof, spent in attending to committee business.

**§ 914.33 Powers.** The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

**§ 914.34 Duties.** It shall be the duty of the committee:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To select a chairman and such other officers for each fiscal period as may be necessary, to select subcommittees of committee members and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(c) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(d) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes, and to engage in such research and service activities, which relate to the handling or marketing of potatoes, as may be approved by the Secretary;

(e) To furnish to the Secretary such available information as he may request;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal year, to submit to the Secretary a budget of its expenses for such fiscal year, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal year, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate and exchange information with other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

## EXPENSES, ASSESSMENTS, AND BUDGETS

**§ 914.40 Budget.** The committee shall prepare a budget for each fiscal year, showing its anticipated expenses and a proposed rate of assessment to cover such expenses. The committee shall transmit such budget to the Secretary, together with a report accompanying the budget showing the basis for its calculation of expenses and the proposed rate of assessment.

**§ 914.41 Expenses.** The committee is authorized to incur such expenses as the Secretary, upon the basis of the aforesaid budget and other available information, finds may be necessary during each fiscal year to perform its functions under this part and for such other purposes as may be appropriate pursuant to the provisions of this part.

**§ 914.42 Rate of assessment.** The funds to cover such expenses shall be acquired by the levying on handlers of assessments which shall be at a rate fixed by the Secretary, upon the basis of the committee's recommendation, or other available information. Each handler who first ships potatoes shall pay assessments to the committee, upon demand, which assessments shall be such handler's pro rata share of the expenses which will be appropriately incurred by the committee during each fiscal year. Such handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of potatoes handled by all handlers as the first handlers thereof, during the same fiscal year.

**§ 914.43 Increasing rate of assessment.** Upon recommendation of the committee, or upon the basis of a later finding relative to the committee's expenses or revenue, the Secretary may increase the rate of assessment to cover expenses which shall be appropriately incurred. Such increase shall be applicable to all potatoes handled during the given fiscal year.

**§ 914.44 Refunds.** If at the end of a fiscal year, it shall appear that assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund of the excess assessments shall be credited with such refund against the operations of the following fiscal year, unless he demands payment thereof, in which event such proportionate refund shall be paid to him.

**§ 914.45 Accounting.** All funds received by the committee, pursuant to any provision of this part, shall be used solely for the purposes specified in this part and shall be accounted for in the following manner:

(a) The Secretary may at any time require the committee and its members to account for all receipts and disbursements; and

(b) Whenever any person ceases to be a committee member or alternate, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to

his successor in office or to such person as the Secretary may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds, or claims vested in such member or alternate.

**§ 914.46 Collection of funds.** (a) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of the expenses of the committee.

(b) In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

## REGULATION

**§ 914.50 Marketing policy preparation.** Not later than June 15 of each year the committee shall consider and prepare a proposed policy for the marketing of potatoes during such fiscal year. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for potatoes, giving appropriate consideration to:

(a) Market prices of potatoes, including prices by grade, size, and quality, in wholesale or consumer packs, or any other shipping unit;

(b) Potatoes on hand in the market areas, and as manifest by supplies en route and on track at the principal markets;

(c) Supply of potatoes, by grade, size, and quality, in the production area and in other production areas;

(d) The trend and level of consumer income; and

(e) Other relevant factors.

**§ 914.51 Marketing policy report.** (a) The committee shall submit to the Secretary a report setting forth the aforesaid marketing policy; a copy of such report shall be made available to producers and handlers.

(b) In the event it becomes advisable to deviate from such marketing policy, because of changed supply or demand conditions, the committee shall formulate a new marketing policy in the manner outlined in § 914.50, which shall be submitted to the Secretary and made available to producers and handlers.

**§ 914.52 Recommendation for regulations.** The committee shall recommend regulation to the Secretary whenever it finds that such regulation, as provided in § 914.53, will tend to effectuate the declared policy of the act. The committee may also recommend modification, suspension, or termination of regulations in order to facilitate shipments of potatoes for the specified purposes set forth in § 914.54.

**§ 914.53 Issuance of regulations.** The Secretary shall limit the shipment of potatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such limitation may:



(a) Regulate, in any or all portions of the production area, the shipment of particular grades, sizes, or quality of any or all varieties of potatoes during any period; or

(b) Regulate the shipment of particular grades, sizes, or quality of potatoes differently for different varieties, for different portions of the production area, for consumer and wholesale packs, or any combination of the foregoing, during any period; or

(c) Regulate the shipment of potatoes by establishing and maintaining, in terms of grades, sizes, or both, minimum standards of quality and maturity.

§ 914.54 *Modification, suspension or termination.* The Secretary, whenever he finds upon the basis of recommendations and information submitted by the committee, or other available information, that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to §§ 914.42, 914.43, 914.53, 914.65, or any combination thereof, in order to facilitate shipments of potatoes for the following purposes:

(a) For seed;

(b) For export;

(c) For distribution by the Federal Government, for distribution by relief agencies, or for consumption by charitable institutions;

(d) For manufacture or conversion into specified products;

(e) For livestock feed;

(f) For other purposes which may be specified.

§ 914.55 *Minimum quantity regulation.* The Secretary may establish, upon the basis of a committee recommendation, or other available information, for any or all portions of the production area, minimum quantities below which shipments will be free from regulations issued or in effect pursuant to §§ 914.42, 914.43, 914.53, 914.65, or any combination thereof.

§ 914.56 *Notification of regulation.* The Secretary shall notify the committee of any regulations issued, or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 914.57 *Safeguards.* (a) The committee may recommend and the Secretary, upon the basis of such recommendation, or other available information, may prescribe adequate safeguards to prevent shipments effected pursuant to §§ 914.54 and 914.55, from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege if such certificates are prescribed as safeguards. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship potatoes pursuant to §§ 914.54 and 914.55;

(2) Handlers shall obtain inspection required by § 914.65, or pay the pro rata share of expenses provided by § 914.42, or both, in connection with potato shipments effected under the provisions of §§ 914.54 and 914.55: *Provided*, That

such inspection, or payment of expenses, or both may be required at different times than otherwise specified by the aforesaid sections; and

(3) Handlers shall obtain Certificates of Privilege from the committee for shipments of potatoes effected or to be effected under provisions of §§ 914.54 and 914.55.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that potatoes shipped by him for the purposes stated in §§ 914.54 and 914.55 were handled contrary to the requirements applicable thereto.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of potatoes shipped under duly issued certificates, and such other information as may be requested.

#### INSPECTION

§ 914.65 *Inspection and certification.* During any period in which shipments of potatoes are regulated pursuant to the provisions of §§ 914.42, 914.43, or 914.53, or any combination thereof, no handler shall ship potatoes unless, prior thereto, such shipment was inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate. Each handler procuring inspections pursuant to this section, shall make arrangements with the inspecting agency to forward promptly to the committee a copy of the inspection certificate: *Provided*, That the regrading, resorting, repacking, or other further preparation of inspected potatoes for market shall invalidate prior inspection thereon and subsequent shipment of such potatoes after regrading, resorting, repacking, or other preparation for market shall not be effected unless, prior thereto, such shipment is inspected as provided in this section.

#### EXEMPTIONS

§ 914.70 *Procedure.* The committee may adopt, subject to approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 914.71 *Granting exemptions.* (a) The committee may issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee that, by reason of a regulation issued pursuant to § 914.53, he will be prevented from handling, or causing to be handled, as large a proportion of his production as the average proportion of production handled, or caused to be handled, during the entire season (or such portion thereof as may be determined by the committee) by all producers in said applicant's immediate area of production,

and that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each such certificate shall permit the producer to handle, or cause to be handled, the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of transportation or sale.

(b) The committee may issue certificates of exemption to any handler who applies for such exemption and furnishes adequate evidence to the committee that, by reason of a regulation issued pursuant to § 914.53, he will be prevented from handling as large a proportion of his storage holdings of ungraded potatoes, acquired during or immediately following the digging season, as the average proportion of ungraded storage holdings handled by all handlers in said applicant's immediate shipping area, and that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the handler to handle the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of transportation or sale.

(c) The committee shall be permitted, at any time, to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

§ 914.72 *Appeal.* If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 914.73 *Records and reports and review of exemptions.* (a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes shipped under exemption certificates, a record of appeals for reconsideration of applications, and such additional information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 914.70, 914.71, 914.72, or any combination thereof.



## PROPOSED RULE MAKING

## MISCELLANEOUS PROVISIONS

§ 914.80 *Reports.* Upon the request of the committee with the approval of the Secretary, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties under this part. Handlers shall maintain records from which such reported information can be verified by the committee. The Secretary shall have the right to modify, change, or rescind any requests for reports made pursuant to this section.

§ 914.81 *Compliance.* Except as provided in this part, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part, and no handler shall ship potatoes except in conformity to the provisions of this part.

§ 914.82 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 914.83 *Effective time.* The provisions of this subpart shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 914.84 *Termination.* (a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes: *Provided*, That such majority has, during such year, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before March 31 of the then current fiscal year.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(e) The Secretary shall terminate the provisions of this agreement at the end of any fiscal year, upon the written request of handlers signatory to this agreement who submit evidence satisfactory to the Secretary that they handled not less than sixty-seven percent of the total volume of potatoes handled by the signatory handlers during the preceding fiscal year; but such termination shall be effective only if announced on or before March 31 of the then current fiscal year.<sup>1</sup>

§ 914.85 *Proceedings after termination.* (a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of, or under control of, the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 914.86 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart, or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) effect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart, or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart, or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 914.87 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 914.88 *Agents.* The Secretary may, by designation in writing, name any per-

son, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 914.89 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary, or of the United States, to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 914.90 *Personal liability.* No member or alternate member of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty.

§ 914.91 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 914.92 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 914.93 *Counterparts.* This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute when taken together, one and the same instrument as if all signatures were contained in one original.<sup>1</sup>

§ 914.94 *Additional parties.* After the effective date of this agreement, any handler who has not previously executed this agreement may become a party to this agreement if a counterpart of this agreement is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.<sup>1</sup>

§ 914.95 *Order with marketing agreement.* Each signatory handler favors and approves the issuance of an order, by the Secretary, regulating the handling of potatoes in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the act, such an order.<sup>1</sup>

Done at Washington, D. C., this 18th day of April 1950.

[SEAL]

JOHN I. THOMPSON,  
Assistant Administrator.

<sup>1</sup> Applicable only to the proposed marketing agreement.



## NOTICES

## DEPARTMENT OF THE TREASURY

## Fiscal Service, Bureau of Accounts

[Dept. Circ. 570, Rev. Apr. 20, 1943, 1950, 33d Supp.]

## EMPLOYERS' FIRE INSURANCE CO.

## SURETY COMPANIES ACCEPTABLE ON FEDERAL BONDS

APRIL 14, 1950.

A Certificate of Authority has been issued by the Secretary of the Treasury to the above company under the act of Congress approved August 13, 1894, 28 Stat. 279-80, as amended by the act of Congress approved March 23, 1910, 36 Stat. 241 (6 U. S. C. 6-13), as an acceptable surety on Federal bonds. An underwriting limitation of \$486,000.00 has been established for the company. Further details as to the extent and localities with respect to which the company is acceptable as surety on Federal bonds will appear in the next issue of Treasury Department Form 356, copies of which, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Section of Surety Bonds, Washington 25, D. C.

[SEAL] E. H. FOLEY, Jr.,  
Acting Secretary of the Treasury.

[F. R. Doc. 50-3349; Filed, Apr. 20, 1950;  
8:55 a. m.]

## DEPARTMENT OF COMMERCE

## Office of International Trade

[Case No. 76]

## SHAWNEE MILLING CO., INC., ET AL.

## ORDER SUSPENDING LICENSE PRIVILEGES

In the matter of: Shawnee Milling Company, Inc., 325 South Broadway, Shawnee, Oklahoma; Ralph Andrade, Export Manager, Room 1036, Board of Trade Building, Kansas City, Missouri; Otto E. Schalk, doing business as Worldwide Trading Company, 142 Front Street, San Francisco 11, California.

This proceeding was begun by mailing a charging letter dated August 15, 1949, to the above-named respondents, wherein the Office of International Trade charged respondents with having violated section 6 of the act of July 2, 1940 (54 Stat. 714), as amended, and the regulations promulgated thereunder, by diverting or causing to be diverted to Hong Kong a shipment of 2,500 cwt. of wheat flour which had been exported from the United States under a validated export license authorizing the Philippine Islands as the country of ultimate destination.

Respondents requested an oral hearing, which was held in Kansas City, Missouri, on October 18, 1949. The Office of International Trade and respondents were represented by counsel, respondents appeared personally and testified, oral and documentary evidence was offered and received, and a stenographic transcript of the proceedings was made. All

such evidentiary material was reviewed by the Compliance Commissioner, and upon the basis thereof he filed his report dated March 9, 1950.

It appears from the record and the report of the Compliance Commissioner that respondent Andrade, operating in his own name and also through International Export and Import Co., Inc., a corporation wholly owned by himself, his wife, and son, has engaged in the export business in Kansas City for over thirty years, and for the last five years has represented respondent Shawnee Milling Company, Inc., a flour mill located at Shawnee, Oklahoma, in the capacity of export manager; that respondent Schalk has engaged in the export business in San Francisco for approximately twenty years, operating his business under the trade name of Worldwide Trading Company; that on March 7, 1948, the Office of International Trade issued to Shawnee validated export license No. 1185336 which authorized exportation of 3,900 cwt. of wheat flour to the Philippine Islands as the country of ultimate destination; that early in June 1948, 2,500 cwt. of such flour was exported by Shawnee through the agency of Andrade, purportedly to a customer of Schalk in Manila, under the authority of said license and pursuant to a shipper's export declaration, bill of lading, and other shipping documents which described only the Philippine Islands as the ultimate destination; and that while the vessel was on the high seas, Andrade, acting at the request of Schalk (who was himself acting on instructions from his customer), requested and caused the carrier, Lykes Bros. Steamship Co., Inc., to divert the flour to Hong Kong, at which point it was unloaded and delivered to Schalk's customer.

The Compliance Commissioner found that respondents Andrade and Schalk have both admitted the essential facts charged, but that respondent Shawnee is not chargeable with violation of the export control law and regulations since it had no knowledge of and took no part in the arrangements relating to the diversion.

Concerning the appropriate sanction to be imposed, the Compliance Commissioner found that both Schalk and Andrade acted without thought of concealment or evasion of the export control regulations, were motivated primarily by a desire to help the customer avoid a loss which would result from shipment to the then saturated market in Manila, and, in the view of the Compliance Commissioner, apparently regarded this diversion as essentially merely a matter to be worked out between themselves and the carrier, because the customer had offices in both Manila and Hong Kong. Both Andrade and Schalk appeared to have been of the opinion that because the shipment was going to the same consignee, it was not a matter of great concern whether it went to him at one of his places of business rather than the other, even though they were in different

countries. The Compliance Commissioner further observed that the present charges appeared to be the first brought against Andrade or Schalk for violation of any government regulations, that both appeared to enjoy an excellent reputation for business integrity in their respective communities, and that both manifested at the hearing such repentance and contrition as to lead to the conclusion that future compliance may reasonably be expected of them.

The Director of the Commodities Division has carefully studied the record and the report of the Compliance Commissioner, and agrees with the Compliance Commissioner that a respondent's intentions, motives, and attitude exhibited at a compliance hearing are important considerations which should bear upon the nature and extent of the sanction to be imposed. The Director also agrees with the Compliance Commissioner's conclusion that, notwithstanding the extenuating features of this case and the possibility that those features might warrant only issuance of warning letters, considerations of policy relating to enforcement of export control regulations might well require some suspension of export license privileges. It was in the light of this conclusion that the Compliance Commissioner determined that the most appropriate and just disposition of this case was a matter which he preferred to leave to the judgment of the Director of the Commodities Division.

It is the judgment of the Director of the Commodities Division that the policy considerations in this case, must, on balance, outweigh considerations regarding the personal motives and intentions of the respondents. This admitted offense of diverting a licensed commodity from an authorized to an unauthorized destination was and is one striking close to the heart of export controls, whether considered from the standpoint of national security or from that of effecting an equitable distribution of commodities in short supply. Contrary to respondents' apparent understanding at the time, there is no less hazard to the national interest where diversion is decided upon after the vessel has departed than where this decision is made before exportation. Further, the destination restrictions of a validated license cannot be brushed aside because a foreign consignee who has an office in a licensed country of ultimate destination also has an office in a country for which no such authorization has been given. Since March 1948, prior to the exportation and diversion in this case, one of the chief purposes of export controls has been, and still is, the prevention of diversions, transshipments, and re-exportations of licensed commodities from authorized to unauthorized destinations. Licensing policies and procedures have been designed to prevent such practices. An enforcement program has been established, with one of its main functions the prevention, detection, and investigation of violations of destination controls.



In this setting, the respondents' violation cannot be condoned because their motive happened to be that of aiding a foreign consignee to avoid a financial loss, or because of any other pecuniary concern, as distinguished from a deliberate aim to violate the export control regulations. This conclusion is fortified by the fact that Congress has not required proof of bad faith or evil purpose, or any other kind of specific intent even in criminal cases under section 6 of the act of July 2, 1940, as amended, the export control law which was operative at the time of the diversion here, or the Export Control Act of 1949.

These considerations, which are rooted deep in the policies of the export control laws and regulations, lead to the conclusion that a suspension order should be issued against both Andrade and Schalk, and that, but for certain features in this case, such suspension might appropriately be made to apply for a substantial period from the date of this order. The commodity was, however, wheat flour, which has long since been removed from the Positive List, and has no great strategic importance. In addition, it was not until subsequent to the shipment here that the Office of International Trade adopted a regulation, § 381.4 of the Comprehensive Export Schedule (published August 31, 1949, 14 F. R. 5390), which spelled out in detail the previously implicit prohibition of every carrier from delivering cargo to any country of destination other than the country of the authorized ultimate consignee or intermediate consignee at the request of the shipper, consignor, exporter, purchaser, ultimate consignee, or their agents or any other person having custody or control of the shipment, without prior written authorization of the Office of International Trade to the carrier or its agent. This regulation also makes it clear that no shipper, consignor, or exporter may request or demand that a carrier or agent of a carrier divert cargo from the country of destination named in an authenticated shipper's export declaration.

In view of all the considerations mentioned herein, it is the judgment of the Director of the Commodities Division that a six months' suspension of the validated and general license privileges of Andrade and Schalk should be imposed, but that such suspension should be held in abeyance and enforcement thereof withheld on condition that each of said respondents shall until January 31, 1951, submit to the Director of the Enforcement Staff, Office of International Trade, monthly reports of all exports (showing commodity, quantity, ultimate and intermediate consignees, and destination) made by each of them, such reports to be submitted within ten days after the close of each month. In the event the Office of International Trade shall not, at or before January 31, 1951, by further order, find that respondents have violated any law or regulations relating to export control, the suspension imposed by this order shall thereupon forthwith terminate without further order. This order and the conditions thereof shall apply not only to respondents Schalk and Andrade, but also to any person, firm, corporation,

or other business association with which they or either of them may be now or hereafter connected by ownership or control in the conduct of export trade.

Except as indicated herein, it appears that the findings and recommendations of the Compliance Commissioner are supported by the record and are hereby adopted. Now, therefore, it is ordered as follows:

(1) Respondents Ralph Andrade and Otto E. Schalk are hereby denied for a period of six months the privilege of obtaining or using or participating directly or indirectly in the obtaining or using of export licenses, including general as well as validated licenses, for the shipment of any commodity from the United States to any destination: *Provided, however*, That such suspension shall be held in abeyance and enforcement thereof be withheld on condition that each of said respondents shall by the tenth day of each succeeding month from the date of this order until January 31, 1951, submit to the Director of the Enforcement Staff of the Office of International Trade a report of all exports (showing commodity, quantity, ultimate and intermediate consignee, and destination) made by him during each such calendar month. In the event the Office of International Trade shall not, at or before January 31, 1951, by further order, find that respondents have violated any law or regulations relating to export control, the suspension imposed by this order shall thereupon forthwith terminate without further order.

(2) Such denial of export license privileges, including the conditions herein prescribed, shall extend not only to the above named respondents but also to any person, firm, corporation, or other business association with which they or either of them may be now or hereafter related by ownership or control in the conduct of export trade.

(3) The charges against respondent Shawnee Milling Company, Inc., are hereby dismissed.

Dated: April 17, 1950.

JAMES C. FOSTER,  
Director,  
Commodities Division.

[F. R. Doc. 50-3344; Filed, Apr. 20, 1950;  
8:55 a. m.]

## FEDERAL POWER COMMISSION

[Docket No. G-1354]

WEST TEXAS GAS CO.

### NOTICE OF APPLICATION

APRIL 17, 1950.

Take notice that on April 3, 1950, West Texas Gas Company (Applicant), a Delaware corporation having its principal office in Lubbock, Texas, and authorized to do business in Texas, filed an application with the Federal Power Commission for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, authorizing Applicant to construct and operate 18.67 miles of 10 $\frac{3}{4}$ -inch O. D. pipeline between Anton, Texas, and an existing 10 $\frac{3}{4}$ -inch O. D. line northwest

of Lubbock, Texas, replacing 6 $\frac{3}{4}$ -inch O. D. pipe in the presently existing line between said points.

Applicant states that the proposed 10 $\frac{3}{4}$ -inch line is the continuation of an enlargement program on its Lubbock-Farwell lateral line, portions of which were completed under authorizations at Docket No. G-1066 and Docket No. G-1186; thereby removing the last remaining bottle-neck in this lateral line and allowing the introduction of additional amounts of natural gas daily into its system from the Amherst delivery point of El Paso Natural Gas Company in Lamb County, Texas.

Applicant further states it entered into a gas purchase contract with El Paso Natural Gas Company in 1948 for the purchase of 18,000 Mcf daily for the 1948-49 heating season; of 26,000 Mcf daily during the 1949-50 heating season and for 31,000 Mcf daily during the 1950-51 heating season out of El Paso's 24-inch Dumas-Jal transmission line; and that during the 1950-51 heating season it plans to introduce approximately 5,700 Mcf daily directly into its 8 $\frac{3}{4}$ -inch Canyon-Farwell transmission line, and the balance of 31,000 Mcf, 25,300 Mcf daily into its system near Amherst, Texas.

The application recites that the additional natural gas made available will enable Applicant to handle its 1950-51 heating season peak day firm load of approximately 104,000 Mcf, and the load of Southern Union Gas Company's Clovis district.

The total estimated over-all capital cost of the proposed facilities will approximate \$278,107, for the financing of which Applicant is negotiating with its parent company, Southwestern Development Company.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (13 CFR 1.8 or 1.10) on or before the 5th day of May 1950. The application is on file with the Commission for public inspection.

[SEAL]

LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 50-3344; Filed, Apr. 20, 1950;  
8:46 a. m.]

[Docket No. G-1365]

TENNESSEE GAS TRANSMISSION CO.

### NOTICE OF APPLICATION

APRIL 17, 1950.

Take notice that Tennessee Gas Transmission Company (Applicant) a Delaware corporation, with its principal place of business at Houston, Texas, filed April 10, 1950, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of a sales meter station located at a point on its main natural gas transmission pipeline approximately 1.5 miles south of Robeline, Louisiana.

Applicant proposes to transport natural gas for sale to the Village of Robeline for resale to the inhabitants of the



community estimated at 500 in an amount of the gas requirements approximating maximum daily demand of 10 Mcf for the first year, annual requirements of 8,000 Mcf.

The estimated over-all cost is \$3,000.00 to be financed from cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.10) on or before the 5th day of May, 1950. The Application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 50-3345; Filed, Apr. 20, 1950;  
8:46 a. m.]

[Project No. 16]

NIAGARA FALLS POWER CO. AND NIAGARA  
MOHAWK POWER CORP.

NOTICE OF APPLICATION FOR TRANSFER  
AND AMENDMENT OF LICENSE (MAJOR)

APRIL 17, 1950.

Public notice is hereby given that the Niagara Falls Power Company and Niagara Mohawk Power Corporation of Syracuse, New York, have made joint application pursuant to the provisions of the Federal Power Act (16 U. S. C. 791-825r) for (1) approval of transfer of the license for the Niagara Falls Project from The Niagara Falls Power Company to Niagara Mohawk Power Corporation; and (2) amendment of the license so as to eliminate facilities not specified in the definition of "project" in section 3 (11) of the Federal Power Act.

Any protest against the approval of this application or request for hearing thereon, with reasons for such protest or request, and the name and address of the party or parties so protesting or requesting, should be submitted on or before May 22, 1950, to the Federal Power Commission at Washington 25, D. C.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 50-3343; Filed, Apr. 20, 1950;  
8:45 a. m.]

## FEDERAL TRADE COMMISSION

[Docket No. 5743]

KOKEN COMPANIES, INC.

ORDER APPOINTING TRIAL EXAMINER AND  
FIXING TIME AND PLACE FOR TAKING  
TESTIMONY

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission,

It is ordered, That William L. Pack, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking

of testimony and the receipt of evidence begin on Monday, April 24, 1950, at eleven o'clock in the forenoon of that day, c. s. t., U. S. Court House and Custom House (hearing room to be later designated by the trial examiner), St. Louis, Missouri.

Upon completion of the taking of testimony and receipt of evidence in support of the allegations of the complaint, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

Issued: April 14, 1950.

By the Commission.

[SEAL] WM. P. GLENDENING, JR.,  
Acting Secretary.

[F. R. Doc. 50-3346; Filed, Apr. 20, 1950;  
8:46 a. m.]

## INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 25036]

LARD AND RELATED ARTICLES FROM ILLINOIS  
TERRITORY TO THE SOUTH

APPLICATION FOR RELIEF

APRIL 18, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. G. Raasch, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 578, pursuant to fourth-section order No. 9800.

Commodities involved: Lard, lard compounds, lard substitutes, cooking oils, etc., carloads.

From: Points in Illinois, Iowa and Wisconsin.

To: Points in the south.

Grounds for relief: Circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing,

upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,  
Secretary.

[F. R. Doc. 50-3338; Filed, Apr. 20, 1950;  
8:45 a. m.]

[4th Sec. Application 25037]

MOTOR-RAIL-MOTOR RATES; CHICAGO  
GREAT WESTERN RAILWAY CO.

APPLICATION FOR RELIEF

APRIL 18, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: Middlewest Motor Freight Bureau, Agent, for and on behalf of the Chicago Great Western Railway Company, and Union Freightways, Union Transfer Company, d/b/a.

Commodities involved: All commodities.

Between: Chicago, Ill., and Council Bluffs, Iowa.

Grounds for relief: Competition with motor carriers.

Schedules filed containing proposed rates: Middlewest Motor Freight Bureau, Agent, tariff I. C. C. No. 22, Supplement 19.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,  
Secretary.

[F. R. Doc. 50-3339; Filed, Apr. 20, 1950;  
8:45 a. m.]

[4th Sec. Application 25038]

PHOSPHATE ROCK FROM FLORIDA TO  
PITTSBURG, KANS.

APPLICATION FOR RELIEF

APRIL 18, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for and on behalf of carriers parties to the tariffs named below.



## NOTICES

Commodities involved: Phosphate rock, carloads.

From: Points in Florida.

To: Pittsburg, Kans.

Grounds for relief: Circuitous routes. Schedules filed containing proposed rates: ACL, tariff I. C. C. No. B-3232, Supplement 15. SAL, tariff I. C. C. No. A-8153, Supplement 14.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL]

W. P. BARTEL,  
Secretary.

[F. R. Doc. 50-3340; Filed, Apr. 20, 1950;  
8:45 a. m.]

[4th Sec. Application 25039]

COKE FROM BIRMINGHAM, ALA., AND  
CHATTANOOGA, TENN., TO DANVILLE, VA.

#### APPLICATION FOR RELIEF

APRIL 18, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for and on behalf of the Atlanta and West Point Rail Road Company and other carriers named in the application.

Commodities involved: Coke, carloads.

From: Birmingham, Ala., and points grouped therewith and Chattanooga, Tenn.

To: Danville, Va.

Grounds for relief: Circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a

request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL]

W. P. BARTEL,  
Secretary.

[F. R. Doc. 50-3341; Filed, Apr. 20, 1950;  
8:45 a. m.]

## DEPARTMENT OF JUSTICE

### Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 14532]

ROBERT FINKBEINER

In re: Bank account owned by Robert Finkbeiner. F-28-886-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Robert Finkbeiner, whose last known address is Birkenfeld/Wuertt Umland-Str. 17, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation owing to Robert Finkbeiner, by the Hudson County National Bank, 75 Montgomery Street, Jersey City, New Jersey, arising out of a checking account, entitled Robert Finkbeiner, maintained at the branch office of the aforesaid bank located at Guttenberg, New Jersey, and any and all rights to demand, enforce and collect the same,

is property within the United States, owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 7, 1950.

For the Attorney General.

[SEAL]

HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3351; Filed, Apr. 20, 1950;  
8:55 a. m.]

[Vesting Order 14533]

RENATE GERDA GRABE ET AL.

In re: Bank account owned by Renate Gerda Grabe, Arnold Winkler, also known as Arno Winkler, Erich Winkler, Anna Winkler, Greta Stirnitz, also known as Grete Stirnitz and as Gretchen Stirnitz. D-28-12142-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Renate Gerda Grabe, Arnold Winkler, also known as Arno Winkler, Erich Winkler, Anna Winkler, Greta Stirnitz, also known as Grete Stirnitz and as Gretchen Stirnitz, each of whose last known address is Leipzig, Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation of Seattle Trust and Savings Bank, 804 Second Avenue, Seattle 4, Washington, arising out of a savings account, account number 2958, entitled Estate of Marie Koester, deceased, by H. Otto Giese, Trustee, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Renate Gerda Grabe, Arnold Winkler, also known as Arno Winkler, Erich Winkler, Anna Winkler, Greta Stirnitz, also known as Grete Stirnitz and as Gretchen Stirnitz, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.



Executed at Washington, D. C., on April 7, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3352; Filed, Apr. 20, 1950;  
8:55 a. m.]

[Vesting Order 14547]

KEIZO WOYENAKA ET AL.

In re: Stock owned by Keizo Wooyenaka and others. D-39-1281-D-1, F-39-6537-D-1/2, F-39-631-D-1/2, F-39-6619-D-1, F-28-30565-D-1, F-28-30566-D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the persons whose names and last known addresses are listed below:

*Name and Address*

Keizo Wooyenaka, c/o Sankyo Co., Ltd., Muramachi, Nihombashi-Ku, Tokyo, Japan.  
Matasaku Shiohara also known as Matsuo-oka Shiohara, Sankyo Building, Tokyo, Japan.  
Setsuro Tamura, Kamakura, Japan.

are residents of Japan and nationals of a designated enemy country (Japan);

2. That the persons whose names and last known addresses are listed below:

*Name and Address*

Maria Hollingshausen, Willemrod Bel, Westerburg, Germany.  
Anna Ullrich, c/o Frau Wasserman, Kreis, Gardelegan Post, Beetzendorf, Germany.

are residents of Germany and nationals of a designated enemy country (Germany);

3. That the property described as follows:

a. Four hundred and twenty (420) shares of \$4.00 par value capital stock of Takamine Ferment Company, Room 1104, 527 Fifth Avenue, New York 17, New York, a corporation organized under the laws of the State of West Virginia, evidenced by certificate numbered 1647, registered in the name of Keizo Wooyenaka, together with all declared and unpaid dividends thereon, and

b. One hundred and sixty (160) shares of \$10.00 par value capital stock of International Takamine Ferment Company, Room 1104, 527 Fifth Avenue, New York 17, New York, a corporation organized under the laws of the State of New York, evidenced by certificate numbered 40, registered in the name of Keizo Wooyenaka, together with all declared and unpaid dividends thereon.

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Keizo Wooyenaka, the aforesaid national of a designated enemy country (Japan);

4. That the property described as follows:

a. Twenty (20) shares of \$4.00 par value capital stock of Takamine Ferment Company, Room 1104, 527 Fifth Avenue, New York 17, New York, a corporation organized under the laws of the State of West Virginia, evidenced by cer-

tificate numbered 2018, registered in the name of Matasaku Shiohara, together with all declared and unpaid dividends thereon, and

b. Five (5) shares of no par value common stock of Parke, Davis and Company, Box 118 R. P. Annex, Detroit 32, Michigan, a corporation organized under the laws of the State of Michigan, evidenced by certificate numbered B84619, registered in the name of Matasaku Shiohara, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Matasaku Shiohara also known as Matsuo-oka Shiohara, the aforesaid national of a designated enemy country (Japan);

5. That the property described as follows: One hundred (100) shares of \$4.00 par value capital stock of Takamine Ferment Company, Room 1104, 527 Fifth Avenue, New York 17, New York, a corporation organized under the laws of the State of West Virginia, evidenced by certificate numbered 1754, registered in the name of Setsuro Tamaru, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Setsuro Tamaru, the aforesaid national of a designated enemy country (Japan);

6. That the property described as follows: Twenty (20) shares of \$4.00 par value capital stock of Takamine Ferment Company, Room 1104, 527 Fifth Avenue, New York 17, New York, a corporation organized under the laws of the State of West Virginia, evidenced by certificate numbered 2010, registered in the name of Maria Hollingshausen, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Maria Hollingshausen, the aforesaid national of a designated enemy country (Germany);

7. That the property described as follows: Six (6) shares of \$4.00 par value capital stock of Takamine Ferment Company, Room 1104, 527 Fifth Avenue, New York 17, New York, a corporation organized under the laws of the State of West Virginia, evidenced by certificate numbered 1863, registered in the name of Anna Ullrich, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Anna Ullrich, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

8. That to the extent that the persons named in subparagraphs 1 and 2 hereof are not within a designated enemy country, the national interest of the United

States requires that the persons named in subparagraph 1 hereof be treated as nationals of a designated enemy country (Japan) and that the persons named in subparagraph 2 hereof be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 7, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3353; Filed, Apr. 20, 1950;  
8:56 a. m.]

[Return Order 601]

EDITIONS MAX ESCHIG

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Editions Max Eschig, 49, rue de Rome, Paris (8eme), France; Claim Nos. 30287, 36711; March 10, 1950 (15 F. R. 1320); property to the extent owned by the claimant immediately prior to the vesting thereof by Vesting Order Nos. 3503 (9 F. R. 6124, June 6, 1944) and 3430 (9 F. R. 6464, June 13, 1944); 9 F. R. 13768, November 17, 1944), relating to works listed as owned by Editions Max Eschig in the vesting orders, including royalties pertaining thereto in the amount of \$65,021.24.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on April 14, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3354; Filed, Apr. 20, 1950;  
8:56 a. m.]

[Return Order 604]

INGEBORG SKRAM AND OLE AARDAL

Having considered the claim set forth below and having issued a determination



allowing the claim, which is incorporated by reference herein and filed herewith.

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Notice of Intention To Return Published, and Property*

Ingeborg Skram, nee Aardal, a/k/a Ordahl Moldoen, Norway; Ole Aardal, a/k/a Ordahl, Brime, Norway; Claim No. 27338; December 16, 1949 (14 F. R. 7555); \$130.19 in the Treasury of the United States, to each claimant.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3355; Filed, Apr. 20, 1950;  
8:56 a. m.]

AXEL GRUHN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Axel Gruhn, Skaade Bakker ved Højbjerg, Denmark; Claim No. 37214; property described in Vesting Order No. 290 (7 F. R. November 26, 1942), relating to United States Patent Application Serial No. 373,496 (now United States Letters Patent No. 2,467,933).

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3356; Filed, Apr. 20, 1950;  
8:56 a. m.]

ELSIE FRANCIS JUDD AND AUDREY H. SONNENWALD

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property and Location*

Elsie Francis Judd, Washington, D. C.; Claim No. 41290; \$3,333.33 in the Treasury of the United States.

Audrey H. Sonnenwald, Washington, D. C.; Claim No. 42588; \$1,006.67 in the Treasury of the United States.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3357; Filed, Apr. 20, 1950;  
8:56 a. m.]

OTTO ANDREAS FREDERIKSEN KRAMHØFT

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Otto Andreas Frederiksen Kramhøft, Risskov, Denmark; Claim No. 37131; property described in Vesting Order No. 664 (8 F. R. 4989, April 17, 1943), relating to United States Letters Patent No. 2,251,046.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3358; Filed, Apr. 20, 1950;  
8:56 a. m.]

RAYMOND MEYER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Raymond Meyer, Boulogne-sur-Seine (Seine), France; Claim No. 41688; property described in Vesting Order No. 666 (8 F. R. 5047, April 17, 1943) relating to United States Letters Patent No. 2,160,252.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3359; Filed, Apr. 20, 1950;  
8:57 a. m.]

BRUNO POLLAK

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Bruno Pollak, London, England; Claim No. 42230; property described in Vesting Order No. 5074 (10 F. R. 10135, August 17, 1945) relating to an undivided one-half interest in and to United States Letters Patent No. 1,989,426.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3360; Filed, Apr. 20, 1950;  
8:57 a. m.]

CAMILLE DELALANDRE

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Camille Delalandre, Suresnes (Seine), France; Claim No. 37101; property described in Vesting Order No. 666 (8 F. R. 5047, April 17, 1943), relating to United States Letters Patent No. 2,113,879.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3361; Filed, Apr. 20, 1950;  
8:57 a. m.]

JEAN PIERRE BERTRAND

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:



*Claimant, Claim No., and Property*

Jean Pierre Bertrand, Paris, France; Claim No. 41702; property described in Vesting Order No. 666 (8 F. R. 5047, April 17, 1943), relating to United States Letters Patent No. 2,200,018.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3362; Filed, Apr. 20, 1950;  
8:57 a. m.]

FRANCIS R. APPLETON, JR., AND JEANIE  
COPINGER

NOTICE OF INTENTION TO RETURN VESTED  
PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Francis R. Appleton, Jr., as Ancillary Administrator c. t. a. of the Estate of Jeanie Copinger, deceased, New York, N. Y.; Claim No. 31820; \$41,066.71 in the Treasury of the United States.

Executed at Washington, D. C., on April 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,  
Acting Director,  
Office of Alien Property.

[F. R. Doc. 50-3363; Filed, Apr. 20, 1950;  
8:57 a. m.]



